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ABSTRACT

Inequitable health care for males and females is surprisingly commonplace. Despite this, health care providers, civil rights groups, educators, and even women's rights advocates have largely overlooked the issue. The 11 chapters of this document provide the first extensive civil rights view of sex discrimination in health services. Using Title IX of the Education Amendments of 1972 and the Civil Rights Restoration Act of 1988 as references points, this manual offers a framework to assess health services at schools and colleges, suggests options and strategies for institutional change applicable to arenas outside the education setting, and helps those interested in providing sex-fair health care evaluate the services offered, identify health-related equity issues (such as "special" programs for young mothers), and eliminate discriminatory practices by understanding and using Title IX. Equity issues are discussed in the context of specific topic areas ranging from pregnancy and gynecological health care to mental health and alcohol and drug abuse services. The appendices contain a guide to what Title IX says regarding sex-fair health services and provide a set of charts for gathering information regarding Title IX and school health services to be used in conjunction with the text of the book. The bibliography lists 318 references (KM)

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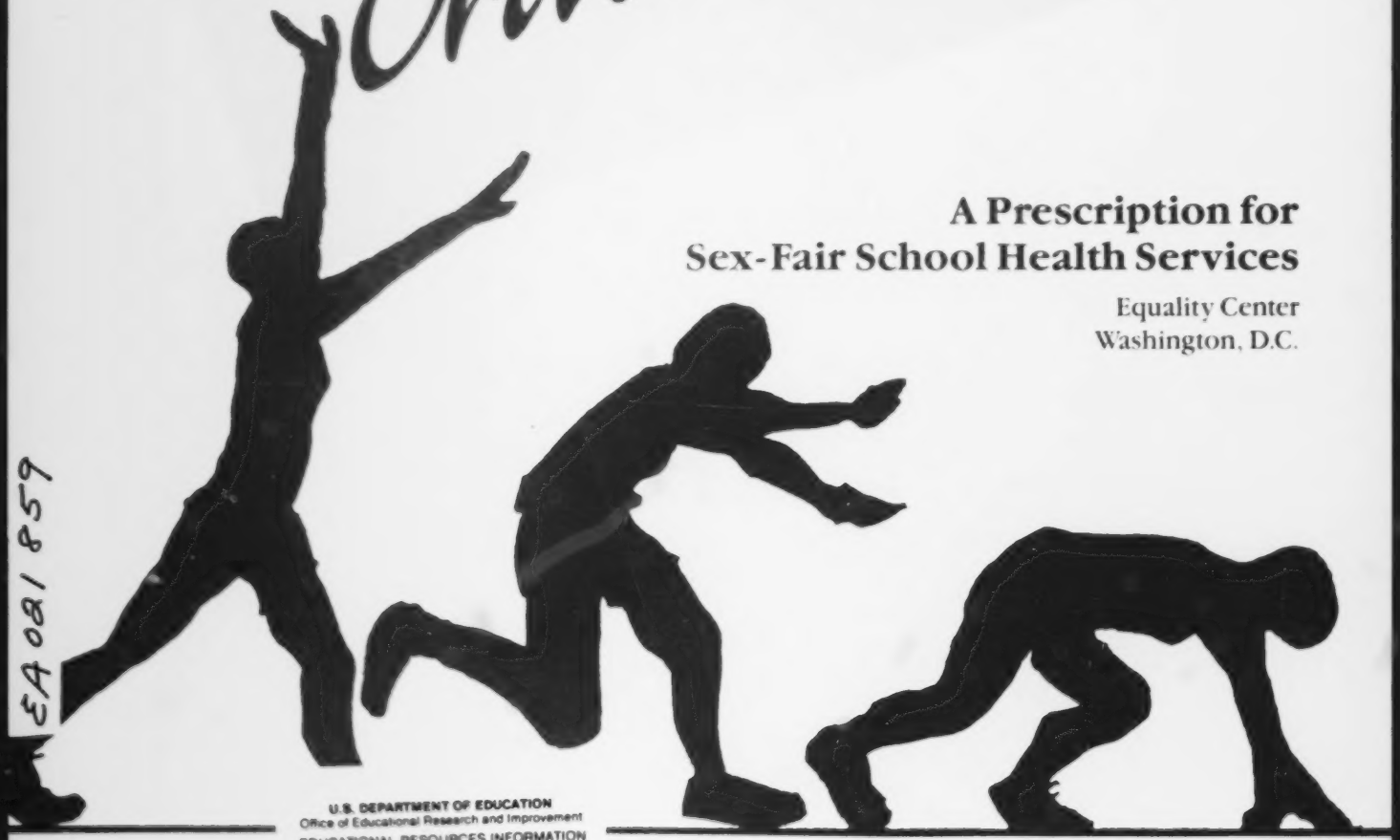

A Prescription for Sex-Fair School Health Services

Equality Center
Washington, D.C.

EA 021 859

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Women's Educational Equity Act Program
U.S. Department of Education

Just What the Doctor Should Have Ordered

A Prescription for Sex-Fair School Health Services

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A Prescription for Sex-Fair School Health Services

Margaret C. Dunkle

EQUALITY CENTER
Washington, D.C.

Women's Educational Equity Act Program
U.S. Department of Education
Lauro F. Cavazos, Secretary

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Preface

If you are like most people, you have never asked: "What do sex-fair health services look like?" As a matter of fact, when we first asked this question in 1980, we found that no one was asking, much less answering, this question. Recognizing this, we began research to look at these issues, especially as they arose in the context of school and college health services.

Nine years have passed since we began work on this project, and seven years have passed since the bulk of the text was drafted. Much has changed during that time. For example, a 1984 U.S. Supreme Court decision (*Grove City* v. *Bell*) severely limited the application of Title IX, the law prohibiting sex discrimination in federally funded education programs. Four years later, in 1988, the U.S. Congress overturned the *Grove City* decision by enacting the Civil Rights Restoration Act, which restored institutionwide coverage to schools and colleges receiving federal funds.* In addition, during this time the role of schools in providing health services for youngsters greatly expanded—and now some elementary and secondary schools provide comprehensive health services for boys and girls.

One thing has not changed, however: there is still little information about how to assess how fair and equitable health services are for boys and girls, for men and women. This book begins to fill that void.

While the primary focus of this book is on education-provided health services, health care providers across the board will find relevant analyses and information on the following pages. Many of the issues are essentially the same no matter what the setting—a school clinic, a community health facility, an emergency room, or a doctor's office.

We have been asked why we focused on *education-provided* health services. There is a twofold answer to this question. First, our funding for this project came from the Women's *Educational* Equity Act (WEEA) program of the U.S. Department of Education. Second, the federal law (Title IX of the Education Amendments of 1972) that prohibits sex discrimination in federally assisted education programs provides the legal underpinnings and a solid frame of reference for analyzing what sex-fair health services look like.

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* The Civil Rights Restoration Act also restored broad coverage to other laws guaranteeing equal opportunity—Title VI of the Civil Rights Act (race and national origin), section 504 of the Rehabilitation Act (handicap), and the Age Discrimination Act, as well as Title IX of the Education Amendments of 1972 (sex).

History of This Project

The long history of the development of this book began in 1980, when the Health Equity Project, which I directed, received funding from the WEEA program. After successfully completing a bureaucratic marathon, the manuscript was approved for publication in 1987. Following this approval, I updated the manuscript where possible and prepared it for final publication.

Our task was complicated by congressional consideration of the Civil Rights Restoration Act. By enacting this law in March of 1988, the Congress made clear that all parts of schools and colleges receiving federal dollars must be nondiscriminatory. In other words, school and college health services must be sex-fair if the institution gets *any* federal money—even though the health services themselves do not directly receive any federal funds. I have updated the manuscript to reflect this broad coverage of the law.

The initial draft of this guide to ensuring sex-fair health services in schools and colleges was the result of more than two years of intensive research and analysis. The Health Equity Project began operations in the fall of 1980 and disbanded two years later, after the draft of this book was submitted for publication. The project was formed to identify issues regarding Title IX and health services for women and girls and to suggest options and strategies for institutional change.

To accomplish this goal, project staff visited two dozen schools, colleges, and departments of education. Well over a hundred additional schools and colleges provided information in response to direct requests and a widely circulated "call for information."

Project staff interviewed and spoke with hundreds of administrators, Title IX experts, health care providers, association representatives, students, teachers, counselors, members of women's organizations, and others concerned with education and the health services needed by children, adolescents, and young adults. Consultations to identify concerns of special importance to minority women were held. Scores of official documents (including complaints, letters of finding, and the legislative and regulatory history of Title IX) were read and analyzed to identify any information that might provide guidance to the project's efforts. Finally, project staff reviewed hundreds of books and journals, and thousands of pages of statistics and analyses, seeking information relevant to sex equity in health services, especially services provided by schools and colleges.

Despite these intense research efforts, we found that helpful information was surprisingly scarce. Although women's health care was receiving increased public attention, no one had taken a comprehensive "civil rights" look at the problems. And while there were some excellent materials on the health care needs of women, no one was looking at these issues from a sex-equity perspective. This omission was striking, especially at the college level, where many student health services are exceptionally responsive to their consumers—students. At the same time, the very absence of this type of information provided us with an additional incentive to move forward with the project's work, in order to build a framework to guide future efforts to improve the quality of health care by identifying and eliminating sex bias and discrimination.

Following approval of this manuscript for publication in 1987, I updated the manuscript, with assistance from the staff of the Equality Center, which I direct. Because of the size of the text, we focused on adding new information where the statistics or trends have changed significantly: resources did not permit a compre-

hensive updating of every fact or figure cited in the text. In some instances, we added references to new articles and sources in the Bibliography, rather than in the text itself.

I especially regret that this book cannot address more thoroughly the important issue of AIDS and HIV infection. Few people had heard of AIDS in 1982, when the original manuscript was completed. Although some references to AIDS have been added to the text, we want to flag this issue as one that deserves much closer study and thought: AIDS is life-threatening, and the differences in infection rates by race and sex make AIDS and AIDS prevention an important sex-equity and race-equity issue.

Acknowledgments

I am grateful to the many individuals who contributed to this publication by providing ideas, guidance, and assistance. The contributions of staff members of the Health Equity Project and the Equality Center cannot be overestimated: Eve Soldinger, Janice Hughes, Diane Chira, Mary Brew, Tondalayo Dodd, Therese McCluskey, Lindsay Robertson, Maggie Nash, and Laura Janis.

Special appreciation goes to Carole Leonard for her careful and professional typing of drafts of the manuscript and to William Brooks and Angela Carpenter for translating these materials from one computer to another and making final revisions.

A resource panel of experts provided important direction and guidance for this effort. The membership of this panel included at least one educator, medical doctor, lawyer, health association representative, education association representative, health policy expert, sex-equity specialist, health services director, professor, and student. Members of the panel also included representatives of groups concerned with the rights of racial and ethnic minorities, as well as persons with disabilities. Thanks go to members of the panel for providing ongoing support and counsel; additionally, many members provided useful comments on the draft manuscript. Members of this panel for one or both years of the project's operation were Elizabeth Abramowitz, Susan Bailey, Kathy Baron, Margaret Bridwell, Jane Chapman, Diane Chira, Arlene Fong Craig, Jim Dilley, Wilma Espinoza, Francelia Gleaves, Marilyn Heins, Holly Knox, Julia Lear, Margot Polivy, Estelle Ramey, Clyde Rapp, Bernice R. Sandler, Donna Shavlik, Barbara Stein, and Lisa Walker.

In addition to the members of the Resource Panel, several other people reviewed sections of the manuscript and provided helpful suggestions for its improvement: Cynthia G. Brown, Jill Reid, Sara Chenetz, Ruth Colker, Katherine Corbett, Colette Daiute, Hannah Dunkle, Maurice Dunkle, Eve Soldinger, Frank Till, and Ellen Vargyas.

I am especially indebted to the staff of the institutions at which we conducted in-depth site visits. Without exception, they assisted the efforts of this project by candidly discussing the health services they provided to students, problems they have encountered, and effective ways to remedy these problems. At the elementary and secondary levels, we visited the school systems of Calvert County and Montgomery County (Maryland), Chicago (Illinois), and Sacramento and San Francisco (California). Staff of the California State Department of Education were also very helpful to this project. At the postsecondary level, we appreciate the cooperation and assistance of the institutions we visited: Pima Community College (Arizona), the University of Arizona at Tucson, the University of Arizona Medical School, the University of California at Berkley, the University of Maryland at

College Park, and the University of Massachusetts at Amherst. We also visited the student health services of Boston College and Boston University in conjunction with the 1981 meeting of the American College Health Association.

Two law students provided helpful legal analysis and assistance as legal interns: Sara Chenetz (the American University, Washington College of Law) and Mimi Gerdes Warner (Antioch School of Law).

Student interns assisted the completion of this project by providing both staff support and a student perspective on the issues: Elise Brown (St. Lawrence University), Margaret Campbell (Clark University), Lisa Leslie (Stanford University), Laura Forman (State University of New York at Stony Brook), Rosamund Holder (Barnard College), and Adriana Szyszlican (California Polytechnic State University).

Linna Barnes, a Washington attorney, provided especially helpful assistance. Nelson Simon provided proofreading assistance. The Federation of Organizations for Professional Women served as fiscal agent during the first year of the project's operation.

Thanks also go to the staff of the WEEA Publishing Center at Education Development Center for navigating the manuscript through the Education Department's lengthy approval process and shepherding the final draft through to publication. The assistance and efforts of Sundra Flansburg, Sonja Latimore, Cynthia Newson, Vivian Guilfoy, and Renée Wilson were especially important.

Finally, I would like to thank the staff of the WEEA program of the U.S. Department of Education for their ongoing support and assistance. The purpose of the WEEA program is "to provide educational equity for women in the United States and to provide financial assistance to enable educational agencies and institutions to meet the requirements of Title IX of the Education Amendments of 1972." We hope this publication will help to forward that ambitious goal.

1

Introduction

"A girl has to leave the minute her pregnancy shows. She can't come back, even if she gets married."

—Chicago high school student*

"There is an on-site doctor for the men's, but not the women's, basketball games. A female basketball player who received an eye injury during a game received prompt medical care only because it happened at an away game—and the opposing team had a doctor on hand."

—Coach at a large northwestern university

"If she's old enough to play, she's old enough to pay."

—California junior high school male talking about a pregnant eleven year old

"The health center is great. I called up last year and asked to see the gynecologist and was told: 'Young lady, if you want birth control pills, don't come here.' Well, I hadn't even mentioned birth control. I didn't want birth control, and what right does some receptionist have to know what I want anyway!"

—Illinois college student

"The policy is to have separate health education classes for boys and girls, even when the content of the classes is the same. In fact, however, some schools don't teach the boys anything in the sex areas."

—East Coast health educator

"In response [to state rules requiring all female, but not male, students between ages fifteen and thirty-five to be immunized against rubella], the university threatened to expel thirty freshman female students who had not complied. The university backed down after the American Civil Liberties Union protested and eventually changed the policy to require males as well as females to be immunized."

—New England state ACLU director

*The quotations and the examples of school policies and practices in this manual are drawn primarily from interviews conducted while researching these issues during 1980–82; from Title IX and other complaints filed with the Office for Civil Rights; from newspaper articles and other reports; and from materials provided to the project by students, administrators, health care providers, faculty, parents, and others concerned with these issues. Many people shared their candid observations on the condition that neither they nor their institution be identified by name.

"One handicapped pregnant girl showed up in the special program for pregnant teens. They got a special education teacher for the program, and now pregnant disabled girls are coming out of the woodwork. I guess they just dropped out of school before."

—West Coast coordinator of programs for pregnant teens

These examples are the tip of the iceberg. Inequitable health care for boys and girls, men and women, is surprisingly commonplace. Despite this, health care providers, civil rights groups, educators, and even women's rights advocates have largely overlooked these issues.

In the past twenty years, women's health care has received increased attention. Lawsuits and front-page articles on issues from the Dalkon Shield to toxic shock syndrome have proliferated. Congress has held numerous hearings on women's health issues. And regulatory battles have been waged around such previously obscure topics as the information that drug companies must include with prescriptions of birth control pills. Despite this substantial attention and the millions of people involved, this book is a first: no one has ever before attempted to compare the health services that girls and boys, women and men, receive to assess whether or not those services are sex fair.

This has been true in large part because sex discrimination in most health services has been—and continues to be—perfectly legal. One of the few places where inequitable health services for females and males is *not* legal is in schools and colleges that are covered by Title IX of the 1972 Education Amendments. Title IX prohibits sex discrimination in schools and colleges receiving federal funds. It covers all aspects of education programs—from admissions to athletics to health services for students.* Yet even in institutions covered by Title IX, changes aimed at ensuring sex-fair health services are hampered by inertia, by apathy, and by a general lack of understanding of just what sex discrimination in health looks like, much less what to do about it.

By looking closely at the situation in schools and colleges, this book highlights changes that could be made elsewhere as well—in hospitals, in public health facilities, and even in doctors' offices. In some cases, obscure or unenforced state or federal laws also forbid sex discrimination in health services. But no one is watching, and these issues have not received the public attention they merit.

There are many unanswered questions about what constitutes sex-fair health services and what should be done to remedy inequities once they are identified. The following pages begin to answer these questions—by identifying ways to recognize sex-based inequities in these services and suggesting ways to provide equitable health services for both sexes.

This manual provides the first extensive civil rights view of sex discrimination in health services—what it is and what can be done to eliminate it. The focus is on issues that arise in schools and colleges because of the protections that Title IX provides to students.

There are few precedents, and applying Title IX to health services is far from an exact science. In many cases, the process of gathering the information to assess sex equity will in itself point to clear solutions: for example, if discriminatory insurance coverage is identified, the remedy is to negotiate a new nondiscriminatory

*The specific provisions of Title IX are explained more fully in the next section of this chapter. Relevant portions of the actual regulation and statute are in appendix A.

policy. In other instances, where the solutions may not be immediately clear, it is hoped that the process of gathering information and attempting to define and resolve problems will point to remedies. The first step in solving a problem is to identify it, and this manual will assist in that important process.

Most school and college health care providers sincerely care about the health and well-being of students and, as a result, are likely to respond positively to efforts to upgrade the quality of care they provide by ensuring that their services, policies, and practices are sex fair.

Who Should Read This Manual?

The list of people who could benefit from taking a closer look at sex-fair health services is long: parents concerned about their children's welfare; high school and college students who think that the health care they receive from their school is inadequate or biased; health care providers looking for ways to improve the quality of care they give to their patients; teachers and administrators who care; policymakers who create programs and make and enforce laws; members of women's organizations and advocates for equal opportunity who want to identify and change discriminatory and unfair health services; and others who believe that it takes healthy citizens to produce a healthy society.

This manual provides a way for anyone concerned with health services—as a consumer, as a provider, or as an administrator—to evaluate health services and begin to identify ways to make them more equitable for girls and boys, for women and men.

This information is not just for females, although the emphasis is on girls and women because they are more likely to experience sex discrimination. Also, women have unique health needs because they get pregnant and bear children. Adult women are more likely than men to be poor and to have health problems associated with poverty. The children (both male and female) of the many low-income women who head families face special health risks. And the top rungs of the health care professions, the doctors, have until recently virtually excluded women.*

However, men and boys can also experience exclusion and bias in health care. For example, in the area of mental health, males are often the last to receive the help they need, both because of their own reluctance to seek assistance and because of societal stereotypes about "real men." Moreover, because fathers care about their daughters, just as mothers care about their sons, they can vicariously experience discrimination against women and girls. Finally, for men or women who believe that providing more equitable health services for both sexes will improve health care in general, this book provides suggestions for change.

The health care that women receive and the knowledge they have about health care profoundly affect the health of their children. Women bear children and are usually the primary caretakers who mold the next generation's attitudes about health care. It is typically the mother, not the father, who takes the sick child to the doctor or clinic, who provides the child with health information, and who ministers to the injured child.

*The major reason for the increase in the number of women doctors is the Title IX provision forbidding sex discrimination in admission to professional schools, including medical schools. This provision was foreshadowed by a 1971 amendment to the Public Health Service Act prohibiting sex discrimination in admission to medical schools.

The relationship between the mother's education and the health of her children is striking. The more education a woman has, the more likely she is to get early prenatal care—and early prenatal care is a key ingredient in having a healthy baby [Kleinman, 1987].* Also, children of highly educated mothers are much more likely to receive medical or dental care than children of mothers with little education. This is true regardless of the family's income and whether or not the child lives with the mother only. In fact, a child with a poorly educated mother in a high-income family is no more likely to have received care than a child with a poorly educated mother in a low-income family [PHS/HHS, 1981b]. Improving the health care women receive and sharpening their awareness and attitudes about health services upgrade the health of all family members.

What Are Sex-Fair Health Services?

School health services that are not sex fair can take many different forms, both blatant and subtle. For example:

- Outright discrimination against pregnant teens by schools that expel them or track them into second-rate "special programs"—leaving young mothers educationally and economically stunted as they bring up their children.

- The total absence of services that only girls and women need, such as gynecological care at the college level—a situation that can allow serious problems to continue undetected, discourage responsible contraceptive decisions, and make early prenatal care more difficult.

- Providing doctors and good medical care for the boys' but not the girls' athletic teams—resulting in inferior care for injured female athletes.

- Ignoring or overlooking problems of special importance to females, such as rape, domestic violence, and incest—leaving girls and women without the services they need to recover from these traumatic experiences, experiences that fewer males ever face.

Sex-fair health services meet the health needs of females and males to the same extent. In practice, this means treating boys and girls the same when they have the same needs and treating them equally well when their needs are different.

In some cases, sex-fair health services means providing exactly the same services to both sexes. An example of this is treatment for the common cold or a broken arm.

In other cases, providing exactly the same health services for girls and boys, for women and men, is exactly the *wrong* thing to do. This is especially true where there are real physical differences between the females and males. For example, most women will become pregnant at some point in their lives and require prenatal and obstetrical care. Also, routine gynecological care is a necessary component of good health care for young women, even if they are not pregnant or sexually active. Most young men, by contrast, do not have comparable routine health needs of this magnitude.

*Abbreviated bibliographic references appear in brackets throughout the text. In sources with multiple authors, only the initial author's name is listed. For complete references, see the Bibliography at the end of this book.

Where the health needs of women and men differ, providing sex-fair health services means meeting the health needs of both sexes equally. For example, if a college health service provides general health care for students, including preventive care, does it cover routine gynecological care for women?

In other cases, providing sex-fair health services means making sure that needed health services are equally available to both sexes, even though one sex may use these services more frequently. For example, many high school and college students (both female and male) are sexually active and are consequently interested in preventing unwanted pregnancies and protecting themselves from AIDS and sexually transmitted diseases. Because most birth control methods are female centered and because females bear the physical burden of unwanted pregnancies, family planning services typically serve far more women than men. However, males need this information and these services as well. If family planning services exist, they should be equally available to men as well as women. But the absence of family planning services imposes a special burden on women.

Another example of services needed by both sexes but frequently used primarily by one sex is mental health. Because of sex stereotypes and ideas about being "real men," males are less likely to use counseling services than females. At the same time, the need of boys for these services may be very real. Special outreach efforts can encourage males as well as females to use available mental health services.

Inequitable health services can result from treating females and males alike when there are important average sex differences—as well as from treating them differently when their problems and needs are essentially the same. In looking at sex differences, it is important to be skeptical of sweeping generalizations, especially when perceived differences are used to limit services to one sex or the other. While some sex differences (most obviously, the reproductive organs of men and women) are biological ("nature"), many sex differences are caused by societal factors ("nurture"). For example, average male-female differences in drug use can be largely attributed to socialization, not biology. In other areas, such as the prevalence of emotional or mental conditions, some average differences appear to be due to nature and others due to nurture. Still other supposed sex differences are the result of poorly constructed studies that reflect the biases of the researcher rather than actual male-female differences. And finally, in looking at sex differences it is important to keep in mind that *many apparent differences are actually averages that may not apply to an individual boy or girl.* For example, while on average boys use heroin more frequently than girls do, an individual girl might use heroin much more often than the typical male addict does.

* * *

This book presents a framework for (a) gathering information about health services that educational institutions provide to students, (b) evaluating whether or not these services are sex fair, and (c) identifying and implementing needed changes.

Chapter 2 discusses Title IX's mandate for nondiscrimination in schools, colleges, and other education programs or activities receiving federal financial assistance. Chapters 3–10 then outline services frequently offered by schools and/or colleges and provide step-by-step assistance in gathering information to assess sex equity in each of eight areas:

- pregnant students and schools
- sex education and birth control services and programs
- gynecological and reproductive health care
- student health insurance
- sports medicine
- alcohol- and drug-abuse services and programs
- mental health services
- other health services and programs (including such things as immunization and dental services)

Chapter 11, the conclusion, provides a summary of the principles for evaluating sex fairness in each of these eight areas.

Finally, appendix A outlines the provisions in the Title IX statute and regulation relevant to health services; appendix B contains model assessment tools, or charts, that are keyed to gather the information outlined in the eight substantive chapters; and the Bibliography lists pertinent sources and references.

2

Title IX's Mandate for Nondiscrimination

Title IX of the Education Amendments of 1972 prohibits sex discrimination against students and employees in federally assisted education programs. The key section of Title IX states:

> *No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.**

The U.S. Congress forcefully clarified the scope of coverage of Title IX (as well as other laws prohibiting discrimination) in 1988, when it enacted the Civil Rights Restoration Act, overturning the U.S. Supreme Court's 1984 *Grove City* decision and overriding President Ronald Reagan's veto of this bill.

Congress enacted the Civil Rights Restoration Act "to restore . . . broad, institution-wide application" of civil rights laws, including Title IX. This act makes clear that all parts of a college or school system must comply with Title IX and other civil rights laws if any part of the institution or system receives federal funds.

This institutionwide coverage is especially important for the topic of this book—health services. Although few school or college health services directly receive federal money, virtually every college (whether public or private) and every public school system in the country receive federal funding. All these schools and colleges must comply with Title IX and provide sex-fair services to their students.

Title IX was passed because Congress recognized that there was massive discrimination against girls and women by schools and colleges. At the same time, because it is also possible for males to face sex discrimination, men and boys are also protected from sex discrimination in education by Title IX.

Although Title IX has been on the books for more than seventeen years, there is surprisingly little concrete guidance, other than the statute and regulation themselves, regarding how to apply the law in the area of health services. The major conclusion reached after reviewing hundreds of complaints and official documents is that sex discrimination in health services has received scant attention from either the public or the government agencies responsible for enforcing the law. Many students and administrators are unaware that Title IX covers health services provided in schools and colleges.

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*Quotations in this book from Title IX or its regulation are set off in italic type.

In fact, until recently, there have been even fewer specific complaints and rulings under Title IX regarding health services than one might expect, given the degree of attention these issues received during congressional consideration of the law and the subsequent development of the Title IX regulation.* There was some mention of health services in the legislative history of the law. For example, in the 1971 debate of Title IX's forerunner, the Senate sponsor of the bill, Senator Birch Bayh, deplored the then-widespread discrimination against women in admission to medical schools and health training programs as a waste of talent in providing quality health care. Many of the ten thousand commenters on the draft Title IX regulation in 1974 discussed the health-related provisions in the regulation. During the 1975 congressional hearings on the regulation, a number of health-related issues were discussed, including pregnancy, termination of pregnancy, and athletic opportunities. And, during 1984–88 congressional consideration of the Civil Rights Restoration Act, there were major debates about abortion and insurance coverage under Title IX.

Title IX: Coverage and Exemptions

The regulation spelling out the specific requirements of Title IX was issued in 1975, following extensive public comment and congressional debate on the issue. When the Department of Education was created, this regulation was recodified [OCR/ED, 1980a]. The regulation covers virtually every aspect of education—admission to institutions; how students are treated in programs, courses, and other institutional activities and services; and employment.† Additionally, the Civil Rights Restoration Act, enacted in 1988, contains further provisions, including several that are health related.

Appendix A summarizes the provisions in the regulation and the Civil Rights Restoration Act that are especially relevant to applying Title IX to health services.

Any school or college (or other institution or organization) that receives federal education funds in the form of a grant, loan, or contract (other than a contract of insurance or guaranty) is required to comply with Title IX. This includes kindergartens, vocational schools, junior and community colleges, four-year colleges, universities, and graduate and professional schools. At the higher education level, Pell Grants are considered federal financial assistance and trigger Title IX coverage. Private as well as public institutions are covered by Title IX if they accept federal education funds. In addition, state and local governments, profit and nonprofit groups, and other people or organizations that accept federal education funds are covered by Title IX.

Several specific exemptions to Title IX are written into the statute. The most important exemption in the area of health services is the *religious exemption.* A school or college controlled by a religious organization may be eligible for an exemption from sections of the Title IX regulation that conflict with a specific

*Most of the health-related Title IX complaints that have been filed address pregnancy discrimination in student health insurance policies. By the end of 1988, over 1,800 such complaints had been logged in by the Office for Civil Rights.

†Although this book addresses sex-fair health services, Title IX also prohibits employment discrimination against the health care providers at a school. This coverage of employment was affirmed by the U.S. Supreme Court in 1982 [*North Haven Board of Education* v. *Bell*].

religious tenet of the controlling organization. This exemption was originally included as a part of the Title IX statute to exempt divinity schools. The two most frequent areas for requesting this exemption are admission to training programs for the ministry and differential treatment of pregnant students and employees, particularly if unmarried.

This religious exemption is very limited: it applies only to schools *controlled by* (not just affiliated with) religious organizations. To receive an exemption, the highest ranking official of the school must write to the Office for Civil Rights (OCR), specifically identifying the section of the regulation and the religious tenet. Further, the exemption is limited to any specific part or parts of the regulation that conflict with the school's religious tenets: it is not a blanket exemption from the entire Title IX regulation. Finally, only a religious tenet can justify an exemption: sex discrimination for reasons of custom, convenience, or administrative rule does not qualify the institution for this exemption.

What follows is a series of questions that will enable you to determine if an institution is eligible for a religious exemption under Title IX. *Use appendix B (Model Assessment Tools) to record answers to these questions.*

Use the first chart in appendix B to collect information about Title IX's religious exemption. First, find out if the highest ranking official has written to OCR, as the regulation requires. (See **Question 1.***) If YES, obtain a copy of the letter requesting the exemption and a copy of the response, if any, from OCR. Then identify any specific sections of the regulation from which the institution is exempt (**Question 2**) and the religious tenet that justifies the exemption (**Question 3**).

A second important exemption is for *sex education classes.* The regulation specifically permits "portions of classes in elementary and secondary schools which deal exclusively with human sexuality" to be single sex. The regulation does not require that a school provide sex education instruction at all, and it does not require that any courses offered be single sex. Rather, it simply permits elementary and secondary schools that have human sexuality or sex education programs to have the option of separating the boys and the girls for portions dealing exclusively with human sexuality.

This exemption is narrow. The fact that one segment of a broader course (such as physical education or health education) deals with human sexuality does not justify making the entire course or program single sex. Further, this exemption applies only at the elementary and secondary levels; courses or programs dealing with human sexuality at the college level must be coeducational.

This human sexuality exemption first appeared about a month after the June 20, 1974, issuance of the proposed regulation, on July 12, when HEW (U. S. Department of Health, Education, and Welfare) published a "clarification" of the draft regulation, saying that "sessions involving sex education" in elementary and secondary schools could be held separately for boys and girls. A year later, the final regulation published by HEW said: "Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls." According to the official analysis that was published with the final regulation,

Question 1. If the institution is eligible for a religious exemption under Title IX, has the highest ranking official written to the Office for Civil Rights requesting it?

Question 2. Identify any specific sections of the regulation from which the institution is exempt.

Question 3. Identify the religious tenet that justifies the exemption.

*The numbered questions appearing in the margins throughout this book correspond to specific items in the model assessment tools (charts) in appendix B. The text of this manual discusses each item included in the charts. Record the answer to each question on the appropriate chart in appendix B.

> *the present language* [in the regulation] *more precisely identifies the materials which may be taught separately as that dealing "exclusively with human sexuality." It should be stressed, of course, that neither the proposed regulation nor these final provisions require schools to offer sex education classes. Rather, the regulation specifically allows particular portions of any such classes that a school district elects to offer to be offered separately to boys and girls.* [OCR/HEW, 1975, pp. 24132–33]

The 1988 Civil Rights Restoration Act contains new provisions regarding *abortion* that modify previous Title IX standards. Specifically, a person cannot be penalized for seeking an abortion or having had a legal abortion. While institutions can provide abortion-related services if they wish, they can refuse to provide, perform or pay for abortion benefits or services.

In addition, schools may take actions that would otherwise be defined as discriminatory under Title IX if they are remedying previous discrimination. Specifically, the regulation permits schools to take *voluntary affirmative action* to overcome the effects of past discrimination or "limited participation" by one sex or the other. A vital characteristic of affirmative action is that it benefits those people who have traditionally received fewer opportunities. For example, if the sports medicine services for females have been less adequate than those for males, special affirmative efforts to improve services for females are in order. Similarly, if males have received fewer mental health services than their female classmates, even though males' overall need was as great, affirmative efforts to reach the male population more adequately are both in order and specifically encouraged by Title IX.

There are several other exemptions from the regulation that are not relevant to a discussion of health services—such as admission to private undergraduate colleges and admission to the U.S. military academies.

Enforcement of the Law

Individuals who believe that an institution has discriminated against them on the basis of sex can file a complaint with OCR, which then investigates the complaint, attempting to resolve the problem through informal conciliation and persuasion. If this fails to remedy the discrimination, OCR may either hold formal hearings or refer the case to the Justice Department for enforcement by court action. If discrimination is found, the institution's federal funds can be terminated.

In addition, individuals have a private right to sue institutions for discrimination. That is, a person can sue schools directly, bypassing the federal administrative enforcement procedures. The U.S. Supreme Court upheld this right in 1979 [*Cannon* v. *University of Chicago*].

Major responsibility for enforcing Title IX lies with the Office for Civil Rights of the Department of Education. The legal sanctions for not complying with Title IX are identical to those for not complying with Title VI of the Civil Rights Act. The government may delay awarding funds, revoke current awards, or debar institutions from eligibility for future awards. In addition, the Justice Department may bring suit at the Department of Education's request. These sanctions are consistent with the principle underlying Title IX and other civil rights laws—that federal funds should not be used to support discriminatory actions.

Although these penalties—termination of the federal funding upon which most schools and colleges rely heavily—are severe, they are by no means applied lightly. The statute itself requires that the government first attempt to resolve any discrimination problems through informal conciliation and persuasion. In fact, despite the fact that Title IX has been on the books for more than seventeen years, no federal funds have ever been terminated on the grounds that a school has discriminated against its students on the basis of sex.

Discrimination on the Basis of Race, Color, National Origin, and Handicap

Title IX was directly patterned on Title VI of the 1964 Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin in programs receiving federal financial assistance. At the same time, Title VI differs from Title IX in several important ways. Title VI prohibits discrimination in all programs receiving federal financial assistance, while Title IX coverage is limited to *education* assistance. Therefore, Title VI typically covers many programs and activities in hospitals, prisons, and other entities, while Title IX covers only *education* programs and activities. (At the same time, Title IX does cover institutions other than schools if they receive federal *education* funding.)

Because Title IX and Title VI exist side-by-side, minority women and girls are doubly protected from discrimination. If they meet discrimination in school or college health services because of both their sex and their race, they have legal recourse under both these statutes. In some cases the health needs and concerns of minority women may differ from those of either minority men or white women. In other cases, stereotypes that health care providers have about minority women or men can affect the health care they receive.

Discrimination against a person with a disability in any program or activity receiving federal financial assistance is prohibited by section 504 of the 1973 Rehabilitation Act. This law is also patterned on Title VI's prohibitions of racial discrimination. The definition of a "handicapped person" is very broad under this statute and includes "any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."

A handicapped or disabled student who confronts discrimination based on both sex and disability could seek relief under both Title IX and section 504. In addition, at the elementary and secondary school levels, the Education for All Handicapped Children Act (Public Law 94–142) ensures the availability of a free, appropriate public education to all handicapped children requiring special education and related services. Both Section 504 and the Education for All Handicapped Children Act contain important provisions, including procedural safeguards, that often make them the most efficient remedy to discrimination in situations when they apply, even if there is also discrimination on the basis of race or sex.

When student health services are examined for sex discrimination, it might be useful to examine the services for discrimination on the basis of race, national origin, and disability as well. While this book focuses on sex-fair services, it can also be used to provide general guidance for identifying and eliminating other forms of inequitable health services.

State Laws That Complement Title IX

In many states, Title IX's prohibitions against sex discrimination in schools and colleges are complemented by state laws. For example, according to our 1981 survey of state laws,

- Some states (such as Montana, Pennsylvania, and New York) have laws that specifically prohibit sex discrimination in one or more aspect of health care.

- Some states have laws similar to Title IX that specifically prohibit sex discrimination in education and by educational institutions receiving state financial assistance. These states include Pennsylvania, Hawaii, Iowa, and Minnesota.

- The public accommodations laws of many states apparently prohibit sex discrimination by providers of health care (including schools and colleges) and/or by educational institutions themselves. This application of public accommodations laws, while fairly clear from the statutory language, has evidently not been tested in the courts or applied by state human rights agencies. States with relevant public accommodations laws include Kansas, Rhode Island, Iowa, Idaho, Washington, California, and Maryland.

- Many states have statutes that prohibit or limit discrimination in insurance on the basis of sex, including health insurance policies issued to students. States with such laws include Colorado, California, Florida, Arizona, South Carolina, Rhode Island, New Mexico, Michigan, Maryland, and Minnesota.

- State equal rights amendments would typically prohibit discrimination in health care and in public elementary and secondary schools as well as state-supported colleges and universities.

While a state or local law can complement Title IX, it cannot diminish or lessen Title IX's requirements for nondiscrimination. If there is a conflict between Title IX and a state law, the principle of federal supremacy applies. At the same time, if a state law is *stronger* than Title IX, as some are, complying with the state provision will also comply with Title IX.

* * *

Title IX's prohibition against sex discrimination in federally assisted education programs requires that schools and colleges—and any other institutions receiving federal educational funds—identify and eliminate sex discrimination in all services and activities, including health services provided to students. In many instances, Title IX's mandate is reinforced by state laws that also prohibit sex discrimination. These requirements make a strong case for evaluating health services to identify sex discrimination and taking prompt and effective steps to make services sex fair. The chapters that follow provide an issue-by-issue framework for undertaking this process.

3

Pregnant Students and the Schools

"If a girl is pregnant, she can't participate in graduation ceremonies."
—A New Jersey student

"This girl that was pregnant wasn't allowed by the sponsor of the National Honor Society to march in the induction ceremony."
—Another New Jersey student

"They [administrators] don't let pregnant girls stay in school. They kick them out. I guess they think they set a bad example, but I'm not sure why."
—A Hispanic student

"Even after she had her baby, they wouldn't let her play. She's still the best player around, though."
—A student, noting that a pregnant girl was removed from the basketball team

"I've never seen a pregnant girl at my high school. I don't know if they are kicked out or what. There must be a lot of fooling around, and I don't think everyone who gets pregnant has an abortion. Maybe they are just discouraged from staying in school by the teachers and administrators."
—A New York City public school student at a highly selective school, commenting on the invisibility of pregnant teens

"Another woman thought she was pregnant and went to the gyn-nurse for a test. It was her understanding that the nurse would call her with the result, but she never received a call. When the student called the nurse she was told: 'I have known for several days that you were not pregnant but I thought I would let you worry. Have you learned your lesson?'"
—A student at an Illinois college

Introduction

Pregnant teenagers and preteens are, almost by definition, students in elementary and secondary schools. At least they are until they drop out of school, as many do. *Parenting* teenagers are less often students, even though their need for education

and training to support themselves and their children may be even greater than that of a student not facing early parenthood.

Although teenage pregnancy and parenting are often discussed in the same breath, they involve different issues, both for the teens and from an equity viewpoint. Pregnancy, on the one hand, is primarily a health concern, and the major test of equity is whether the school treats pregnancy as it treats other health concerns. Parenting, on the other hand, poses more subtle equity concerns. For example, since the mother rather than the father is typically the primary caregiver, apparently equitable policies (or the lack of policies altogether) in this area affect females far more than males.

Because this book focuses on health-related issues, this chapter emphasizes pregnancy, rather than parenting. For an expanded analysis that includes parenting as well as pregnancy, refer to *Adolescent Pregnancy and Parenting: Evaluating School Policies and Programs from a Sex-Equity Perspective.** Also, because discrimination against pregnant students is most pronounced in elementary and secondary schools, this chapter focuses on those levels, rather than postsecondary education.

Public schools have a unique and ready access to the important and vulnerable population of pregnant and parenting teenagers. While educators and educational institutions cannot assume the full responsibility of providing all the services these teens need, educators and the schools can both provide much-needed leadership and be a catalyst for coordinating services with health and social service agencies.

There are more than a half-million births to teenagers each year. (In addition, approximately 400,000 teens have abortions each year.) In 1981, 537,024 babies were born to mothers under age twenty. Close to 200,000 babies—or 37 percent—were born to mothers age seventeen or younger. And almost 10,000 babies were born to adolescents age fourteen or younger [PHS/HHS, 1984, pp. 5, 16]. Almost all teenage mothers (96 percent) keep their babies rather than placing them for adoption [AGI, 1981b, p. 27].

Many pregnant elementary and secondary students still drop out of school, often with prompting from their teachers or counselors. Forty-one percent of the female students who drop out of high school between their sophomore and senior years do so because of pregnancy and/or marriage [Peng, 1984]. In 1981, for example, 79 percent of all nineteen-year-old women—but only 61 percent of nineteen-year-old mothers—had completed high school [PHS/HHS, 1984, p. 9]. Eighty percent of those who drop out never return, and more than 25 percent of these young mothers become pregnant again within a year [PHS/HEW, 1979c, pp. 5–9; Furstenberg, 1976, p. 14].

Teenage parenthood limits the education of the mothers and, to a much lesser extent, the fathers. This makes intuitive sense and is supported by study after study. One longitudinal study, conducted by Josefina J. Card and Lauress L. Wise, found that a woman who had her first child by age eighteen was half as likely to earn her high school diploma as a woman who did not have children until her mid-twenties. Young fathers were about 70 percent as likely to get their high school diplomas [Card and Wise, 1981, p. 220].

These figures are especially striking since they were gathered from matched samples—that is, the adolescent parents had the same level of academic ability, the

*This booklet was written by Margaret Dunkle and published by the Council of Chief State School Officers; it is available from the Equality Center (1223 Girard Street, NW, Washington, D. C. 20009) for $10.00 prepaid.

same racial and socioeconomic background, and even the same expectations regarding college as nonparenting teens. The only major difference was parenthood.

The age at which a woman has her first child is closely correlated with the likelihood that she will live in poverty. More than 30 percent of women who have their first child before age sixteen have incomes below the poverty level, compared with 14 percent of all women. The figures are even more striking for Black women, where close to half of these young mothers have poverty incomes [Trussell, 1981a, pp. 258–59].

Many teenage mothers—with limited skills, interrupted educations, and small children to clothe and feed—depend on public assistance for support. In 1975, about half the $9.4 billion invested in the federal Aid to Families with Dependent Children (AFDC) program went to families in which the woman had given birth while a teenager. About 60 percent of women in families receiving AFDC payments had given birth as teenagers, compared with about a third of women not receiving aid. About 25 percent of teenage mothers currently receive AFDC payments. Not surprisingly, families headed by young mothers are seven times more likely than other families to be poor [AGI, 1981b, pp. 32–33].

The seriousness of the consequences of teenage pregnancy and parenthood and the fact that pregnant adolescents are virtually always elementary and secondary school students make the issue of how schools treat pregnant students an important social concern—one that would deserve the attention of educators even if Title IX's prohibitions against sex discrimination did not exist.

In response to Title IX's mandate for nondiscrimination and the specific prohibitions in its regulation against pregnancy discrimination, most schools halted blatant discriminatory practices in the 1970s. However, many schools' policies and practices continue to limit educational opportunities for pregnant and parenting students [Nash and Dunkle, 1989, pp. 3–5].

Limited educational opportunities can be a problem even when a pregnant student is not forced out of school. Of those who stay in school, many are transferred to special programs or special schools for pregnant teens. Sometimes schools coerce or order pregnant students to enroll in these programs, even though such coercion is illegal under Title IX. Some of these programs group pregnant teenagers with "problem students"—juvenile delinquents, students with discipline problems, and alcohol and drug abusers. Some of these programs are first-rate. Even some of the poor-quality programs keep pregnant teens from dropping out of school. Still, most of these separate programs offer limited and inferior educational programs and have few or no extracurricular opportunities. Even the best programs typically force young mothers to return to their regular school shortly after childbirth—a time when these teens most need support and services.

Even when they stay in regular school programs, pregnant and parenting young women are often treated differently from teenage fathers or other students. They report being banned from graduation exercises, being excluded from clubs and other extracurricular activities, and being permanently barred from sports teams.

Discriminatory practices are not as prevalent today as they once were. Still, it is not uncommon for school policies or practices to limit the opportunities of pregnant students who remain in school—by, for example, subtly pressuring pregnant students to enroll in special programs that may not be appropriate for their needs or by denying pregnant students access to school honors and activities. Sometimes these practices are the result of an official action by a school adminis-

trator or the school board; more often, they are put in place on an ad hoc basis by an individual teacher, counselor, or administrator. In any event, the school has the responsibility under Title IX to eliminate practices that discriminate against pregnant students. The next section discusses these Title IX provisions in detail.

Title IX and Pregnancy in the Classroom

The purpose of Title IX is to ensure equal educational opportunity for both girls and boys. The law was enacted because of overwhelming evidence that, in virtually all schools and colleges, girls and young women did not have this opportunity. Title IX alone will not ensure equal educational opportunity to teenage girls who are pregnant or teenage girls and boys who are parenting. At the same time, evaluating school policies and practices from a Title IX perspective can be a good starting point to identify and eliminate educational barriers for these teens.

It is difficult to overemphasize the importance of education in a democracy. The benefits of education are especially important to a pregnant or parenting teenager who has current health expenses and may soon assume the economic and emotional costs of parenthood.

Discrimination against pregnant students was both well documented and widespread when Title IX was enacted in 1972. For example, a government report published in that year revealed that less than a third of the country's school districts offered pregnant students any education at all. Most students who were not expelled were either kept at home or segregated in special classes. Of those students who left school, 85 percent never returned [Implementing Title IX, 1976, p. 832].

At the higher education level, the issue of how schools treated pregnant students was raised during the 1971 congressional consideration of Title IX. For example, a study by the American Association of University Women found that while most colleges did not bar pregnant students, more than a third would not let them live in college dormitories [House, 1971, pp. 2660–61].

The Title IX regulation contains specific references to pregnancy, and the general language of the regulation provides wide protections for pregnant students in education programs and activities. These provisions are included in their entirety in appendix A and are summarized below.

- A school cannot discriminate in admission on the basis of pregnancy, childbirth, or recovery.
- Once a pregnant student is admitted, a school cannot discriminate against her in classes, programs, or extracurricular activities.
- A school or college cannot penalize a young woman or discriminate against her because she has had—or plans to have—a legal abortion.*
- As a general rule, schools and colleges do not have to assist a student in having an abortion, nor are they required to provide benefits, services, or facilities related to an abortion. At the same time, institutions that wish to provide such assistance are free to do so under Title IX.*

*These and other provisions in Title IX regarding abortion were added by the 1988 Civil Rights Restoration Act. Regulations implementing these provisions were not yet issued as of August 1989.

- A school must generally treat pregnancy as it treats other medical conditions. For example, medical and health plans and health insurance policies offered through the school must treat pregnancy as they treat other medical conditions. The one exception is abortion: while a school or college *may* cover abortion under its insurance and benefit plan, it may also legally exclude abortion from coverage.*

- While a school may offer separate classes or activities for pregnant students, it cannot force or coerce pregnant students to participate in these classes: participation must be *completely voluntary*, and pregnant students must be permitted to stay in the regular classroom if they so choose.

- Any separate programs or classes for pregnant students must be comparable to those available to other students.

- A school can require certification from a physician that a pregnant student is physically and emotionally able to participate in classes and other activities *only if* it makes the same requirements of other students with medical conditions.

- A school must grant medical leave for pregnancy, even if it does not have an official leave policy. After this leave, the student must be reinstated to the status she had when the leave began.

- A school controlled by a religious organization can obtain a limited exemption from Title IX if one of its religious tenets is inconsistent with Title IX in this area.

Before moving ahead, it is important to note that there are several things that this chapter does *not* do. First, it does not provide extensive guidance in examining educational opportunities for *parenting* students (that is, young women or men who have already become parents). Important issues for these students include the availability of infant care, whether the school allows excused absences to care for a sick child, and transportation to school and to child-care facilities. Also, because of the legal focus of this chapter, it does not include programs and policies that, while desirable, are not specifically required by Title IX. These include such areas as cooperation with health and social service agencies, and in-service training to ensure that teachers and staff (including that important gatekeeper, the school secretary) act in a way that promotes continued education by these teens.

In order to determine whether or not an elementary or secondary school is discriminating on the basis of pregnancy, examine (1) admission of pregnant students to programs and activities; (2) treatment of pregnant students in regular programs and activities; (3) treatment of pregnant students in special or separate schools, classes, and programs (if there are any); and (4) availability and quality of pregnancy-related health services. These four areas are discussed in detail on the following pages. A fifth area—providing less coverage for pregnancy than for other conditions in student health insurance policies—is primarily a problem at the postsecondary level and is discussed in chapter 6.

*This provision was added by the 1988 Civil Rights Restoration Act.

Question 1. How many pregnant students
- a. remained in the regular classroom and program?
- b. remained in the regular classroom/program *but* also took special courses/programs?
- c. enrolled in a special school, program, or class?
- d. received home instruction?
- e. were expelled or suspended?
- f. dropped out of school?
- g. Other. Specify.
- h. are unaccounted for?
- i. Total number of pregnant students.

This chapter will help you determine if *pregnant* students are receiving equal educational opportunities. The information described in this chapter parallels the information requested on the charts on pregnant students and the schools in appendix B. As you identify the information for each item, record it in the appropriate spot in appendix B.

Admission of Pregnant Students to Programs and Activities

Title IX prohibits discrimination in admissions on the basis of pregnancy. To determine if there is such discrimination, gather information about the extent of the problem of teenage pregnancy at the school or in the school district. Sources of information include local health and birth statistics, school attendance and dropout data, and census tract data, as well as interviews and observation. Access to certain records may be restricted to protect the privacy of students.

Because of limitations in the information the school keeps, it may be impossible to obtain precise figures about the number of pregnant students . At the same time, it is important to develop some idea of both the number of students who become pregnant each year and what happens to them: this information is essential in order to identify school policies and practices that either discriminate against pregnant or parenting students or (on the positive side) encourage them to continue their education. The best source of data about teenage pregnancies is *not* likely to be in the school system; local health department statistics or census tract data generally provide the most useful figures regarding births to teenagers.

Using the chart "Pregnant Students and the Schools" in appendix B, begin to collect information. You will note that the first two questions ask for some fairly detailed information regarding the number of pregnant students and what happened to them. While much of this information may not be available, it is important to estimate the figures to get an idea of the extent of the problem. Therefore, find out how many pregnant students remained in the regular classroom and program, remained but also took special courses, enrolled in special programs, received home instruction, were expelled or suspended, dropped out, used some other option, or were unaccounted for. Determine, too, the total number of pregnant students. (See **Question 1.**)

Start by estimating the total number of pregnant students who carried to term (**item i**). Birth statistics by the age of the mother, obtained from the local health department or census data, should provide a good basis for this number. (Remember that teen mothers may be older than their classmates.) Next, estimate the number of students who fall into each category. If the number of students unaccounted for (**item h**) is sizable, then the first step is to find out what in fact happens educationally to pregnant students.

Conversations with counselors, physical education teachers, and local health clinic personnel can be helpful in getting a rough idea of both the total number of pregnant teenagers and what happens educationally to these students each year. In addition, enrollment data for special schools and programs and data compiled by the local health department on births can be helpful. Even though these figures will be imperfect, attempting to compile them will both provide a general sense of the scope of the problem and raise awareness of the issue.

Schools covered by Title IX cannot legally expel or suspend a student because of pregnancy (**item e**). In addition, the long-term economic prospects for the young woman and her child become even more bleak if she is forced out of school.

If all or most pregnant students are enrolled in a special school or program (**item c**) or have dropped out of school (**item f**), school personnel may be pressuring or coercing these students to leave the regular classroom in violation of Title IX.

Many students do not return to school after their child is born. Sometimes this is because of overt discriminatory policies of the school. Sometimes this is because of more subtle factors, such as the difficulty in arranging for infant care.

In assessing equity, it is important to get a general idea of what happens to the students after childbirth. It may be more difficult for a young mother to remain in school than it is for a pregnant student who does not yet have child-care responsibilities. Therefore, find out how many students, after childbirth, returned to or stayed in the regular program; stayed in a special program; did not return to school; took some other action; or were unaccounted for. Note the total number. (See **Question 2.**)

If students stayed in or returned to the regular classroom or program (**item a**), there is almost certainly no violation of Title IX. If students stayed in a special class or program (**item b**), a Title IX violation is possible (if, for example, these students faced barriers when they attempted to return to the regular classroom). If students did not return to school (**item c**), there may be Title IX violations (if, for example, special reentry restrictions were placed on these students).

In addition, even if there are no Title IX violations, if the dropout rate (**item c**) is high or if many students are unaccounted for (**item e**), a review of school policies and practices may be in order. This review could go beyond Title IX to identify obstacles to continued education for young mothers (such as lack of child care, transportation, or health services) and ways to work with community agencies to ensure that young parents have the services they need to be both effective students and effective parents.

Pregnant students are often denied access, or are granted only limited access, to the range of programs, courses, and activities offered by the school. To determine if this is a problem, find out whether pregnant students are admitted to school programs and activities on the same basis as students with medical conditions. (See **Question 3.**) To answer this question, look at written policies and talk with both students and school personnel to learn how these policies are applied.

If pregnant students *are* admitted to all activities, classes, and programs on an equal basis with other students, then there is not an admissions problem. (Even if you think that there is no discrimination, read the "If NO" part of this question: sometimes differences go unnoticed.)

If, however, pregnant students are *not* admitted on exactly the same basis as other students with medical conditions, a problem exists. To determine how severe the problem is and to compare the treatment of pregnant students with that of students having other medical conditions and with that of male students, obtain the following information on the rules, policies, and practices that treat students differently and who imposed them and why. (See **item a.**) Possible rules, policies, or practices that treat pregnant students differently include the following:

- Pregnant students are expelled or suspended.
- They must enroll in a special program or class.
- They are required to have special counseling.
- How a pregnant student is treated depends on her marital status (e.g., a married student is allowed to enroll in classes; an unmarried student is not).

Question 2. After childbirth, how many students

a. returned to or stayed in the regular classroom/ program?
b. stayed in a special class/ program?
c. did not return to school?
d. Other. Specify.
e. are unaccounted for?
f. Total.

Question 3. Are pregnant students admitted to programs and activities of the school on exactly the same basis as other students with medical conditions?

a. If NO, describe any formal or informal rules, policies, or practices that treat pregnant students differently; specify who imposed them; and list the reasons given to justify them.
b. If NO, describe any comparable admissions restrictions on students with other medical conditions.

Question 4. Does the school have and implement a clear policy *not* to harass or discriminate in admission against a young woman who has had a legal abortion?
If NO, describe how the school discriminates in admission against these students.

Question 5. Are pregnant students treated the same as other students in all programs and activities of the school, including extracurricular activities?
If NO, describe any formal or informal rules, policies, or practices that treat pregnant students differently; specify who imposed them; and list the reasons given to justify them for the following areas:

a. Treatment in courses and programs.
b. Grades.
c. Honors and academic recognition.
d. Financial aid and scholarships.
e. Student records, recommendations, and job placement and counseling.
f. Extracurricular activities.
g. Dormitory and housing rules.
h. Access to school-provided and -facilitated health services.
i. Other discriminatory treatment. Specify.

- Pregnant students cannot enroll in certain classes, such as advanced placement or honors classes.

- They are required to have a tutor or home instruction.

Also describe comparable restrictions in admitting students with other medical conditions. (See **item b.**) Although rarely the case, different treatment of pregnant students *may* be permissible if similar restrictions are made of all students with medical conditions. At the same time, restrictions against other students with disabilities might violate Section 504 of the Rehabilitation Act, which prohibits discrimination against the handicapped, Most often, schools do *not* impose similar restrictions on students with other medical conditions.

Finally, because Title IX specifies that schools and colleges cannot penalize a young woman who has had a legal abortion, look at whether or not the school discriminates in admission against such students. Ask whether the school has implemented a clear policy *not* to harass or discriminate in admission against a young woman who has had a legal abortion. (See **Question 4.**) If the answer is YES, then there is no Title IX problem. If, however, the answer is NO, the school is violating Title IX (unless the institution has received a religious exemption from this part of the law).

The next area to examine is the treatment of pregnant students.

Treatment of Pregnant Students in Regular Programs and Activities

Title IX specifically requires that schools not discriminate against students on the basis of pregnancy once they are enrolled. In the past, schools routinely treated pregnant students differently, even if they were not expelled. Today, although the situation has improved, discriminatory practices can still be found in elementary, middle, and secondary schools. Even at the college level, pregnant students or unmarried mothers may find themselves treated as second-class citizens in the classroom, offered less than full participation in school activities and denied honors.

Sometimes these practices are the result of an official school board or board of trustees position; more often they are put in place on an ad hoc basis by an individual teacher, counselor, or administrator. In either event, the school has the responsibility under Title IX to remedy practices that discriminate against pregnant students.

As a starting point in evaluating whether or not the institution discriminates in its treatment of students on the basis of pregnancy, review policies and materials obtained earlier, and conduct interviews as needed, to ascertain whether pregnant students are treated the same as other students in all school programs and activities, including extracurricular activities. (See **Question 5.**) If the answer to this question is YES, then there is not a problem with discriminatory treatment of pregnant students in school programs and activities. If, however, the answer is NO, take a closer look and identify any rules, policies, or practices (including who imposed them and why) that treat pregnant students differently in the areas outlined below. In reviewing how pregnant students are treated, use the examples that follow as a checklist. Then record your findings on the forms in appendix B.

a. *Treatment in courses and programs*
Even if a school admitted pregnant students to programs without discrimina-

tion, the school and individual teachers, counselors, and administrators may discriminate against these students *once they are admitted*. Possible ways this discrimination could manifest itself are (i) being excluded from certain courses and programs (such as the honors program or advanced placement classes); (ii) having additional requirements imposed before being able to take a class (such as requiring a medical certification that is not required of other students with temporary physical disabilities); (iii) being harassed or ridiculed in the classroom because of pregnancy; (iv) telling pregnant students they cannot substitute another course for physical education, even though students with other medical conditions are allowed to substitute activities or another course; and (v) being excluded from laboratory courses, even though there was no medical justification for this.

b. *Grades*
Regarding grades, ways a pregnant student might be treated differently include (i) receiving a lower or failing grade in physical education or other classes because of limitations related to pregnancy (while, for example, students with other medical conditions are allowed to substitute activities or repeat the course at a later date) and (ii) having more stringent conditions for making up missed work or assignments.

c. *Honors and academic recognition*
If a school restricts the eligibility of a pregnant student for any honors or academic recognitions, it is violating Title IX. For example, a school is not providing pregnant students with equal opportunity if it restricts the eligibility of a pregnant student for (i) membership or offices in academic or professional honor societies (e.g., National Honor Society, Phi Beta Kappa); (ii) being on the honor roll, dean's list, and so on; (iii) being valedictorian, salutatorian, or presidential scholar or receiving other recognition for outstanding academic achievement; (iv) delivering a valedictory address or being excluded from the graduation ceremony; or (v) competing for and receiving other academic prizes or awards (e.g., "Best Math Student").

d. *Financial aid and scholarships*
Discrimination against pregnant students in this important area could include such things as being declared ineligible for scholarships from the school or for school-assisted scholarships for postsecondary education, special workshops, conferences, and so on. Additionally, if the school considers the student's pregnancy in making financial aid decisions in a more restrictive way than it considers other medical conditions, it may be violating Title IX by limiting the student's access to financial aid. Finally, if a postsecondary school has a tuition-refund policy for students who drop out for personal or health reasons during the semester but does not apply this policy equally to pregnant students, the school is most likely violating Title IX.

e. *Student records, recommendations, and job placement and counseling*
Schools sometimes discriminate against a pregnant student in this respect, for example, by (i) placing negative comments about such things as the academic ability or moral character of the student in her school record, because of her pregnancy; (ii) refusing to provide the student with a recommendation for either continued education or employment, or providing an unjustified nega-

tive recommendation, because of the student's pregnancy; (iii) refusing, solely because of a student's pregnancy and even if there is no medical justification, to place a pregnant student in, or recommend the student for, jobs she can perform; (iv) counseling her, solely because of her pregnancy, to enroll in inappropriate programs or to apply to inappropriate postsecondary schools; and (v) requiring her to have special counseling even though she doesn't want it.

f. *Extracurricular activities*
One historically common form of inequitable treatment of pregnant students is to limit their participation in extracurricular activities. Following are some examples of how this discrimination might manifest itself: (i) pregnant students are barred from being members of clubs or from participating in such activities as class trips and class plays; (ii) they cannot be student government or class representatives or officers; (iii) they cannot be student representatives on the board of regents, school committee, and so on; (iv) they cannot be club or class officers; (v) they cannot run for other positions, such as prom or homecoming queen or court member; (vi) they cannot be on the ballot for "class favorites," such as "Most Likely to Succeed"; (vii) they cannot participate in graduation ceremonies; (viii) they cannot participate in sports and athletic teams and events (even when there is no medical reason to exclude them); (ix) they cannot participate in other school-sponsored or related events; and (x) they cannot participate in extracurricular activities unless they receive a physician's certificate, even though this is not required of students with other medical conditions.

g. *Dormitory and housing rules*
At the postsecondary level, one may find discrimination against pregnant students with regard to dormitory and housing rules. For example, if a school does not allow pregnant students to live in the dormitory or if it requires them to have medical certificates to live in the dormitory (while not making the same requirements of all other students with medical conditions), the school might well be in violation of Title IX. After the child is born, the school could allow the student and her child to live in the dormitory, but it is not required to do so by Title IX.

h. *Access to school-provided and -facilitated health services*
This could include denying infirmary or health room services to pregnant students.

i. *Other discriminatory treatment*
Other discriminatory treatment could include such things as (i) unevenly or selectively applying disciplinary measures to pregnant students; (ii) forbidding pregnant students from taking, or requiring them to take, study halls; and (iii) treating absences for doctor visits due to prenatal care and pregnancy differently from how other medical absences are treated.

Next, look at the treatment of students who have had abortions. While institutions that wish to provide assistance with abortion are, under Title IX, free to do so, they are not required by the law to assist a student in having an abortion or to provide benefits, services, or facilities related to an abortion. Further, other

terminations of pregnancy, such as miscarriage or ectopic pregnancies, must be treated as other medical complications. To do otherwise would penalize a student for having a legal abortion, something expressly forbidden by the Civil Rights Restoration Act.

To see how your school fares in this area, ask whether the school treats students who have had an abortion as it treats other students in all school programs and activities. (See **Question 6.**) If the answer to this question is YES, then there is not a Title IX problem with regard to treatment of students who have had legal abortions. If, however, the answer is NO, there *may* be a problem. Specifically, if you identify ways the school or college treats students who have had abortions differently (**item a**), then there is probably a Title IX violation. On the other hand, the differential treatment in access to school-provided and school-facilitated health services (**item b**) is legal under Title IX.

Even though it is legal under Title IX for an institution to deny services or facilities related to an abortion, the school may wish, instead, to provide services—to ensure that the student is able to stay in school and receive the health care she needs.

Another way a school might discriminate against a pregnant student is to make fewer or less appropriate accommodations for her than it does for students with other medical conditions. Therefore, identify whether the accommodations the school makes for *physical disabilities* due to pregnancy and its symptoms are comparable to those made for other medical conditions. (See **Question 7.**) If they are not comparable, then look further to see how these accommodations differ for pregnant students.

Some of the symptoms of pregnancy do not have immediately obvious parallels to other conditions. While the list in table 3.1 of some common conditions or symptoms of pregnancy is necessarily imperfect because of this, the table is included to provide some commonsense guidance on this issue. Next to each pregnancy-related symptom is a nonpregnancy-related similar symptom and some ways in which the school might reasonably accommodate the symptom.

Question 6. Does the school treat students who have had abortions as it treats other students in all programs and activities of the school?

a. If NO, describe how students who have had abortions are treated differently with regard to treatment in courses and programs, grades, honors and academic recognition, financial aid and scholarships, student records, recommendations, job placement and counseling, extracurricular activities, dormitory and housing rules, and other practices.

b. If NO, describe how students who have had abortions are treated differently with regard to access to school-provided and -facilitated health services.

Question 7. Are the accommodations the school makes for the *physical disabilities* due to pregnancy and the symptoms of pregnancy comparable to those the school makes for other medical conditions?

If NO, describe how the accommodations are inadequate and/or unequal for pregnancy.

Table 3.1. Comparable Conditions for Pregnancy and Other Medical Conditions and What Schools Can Do to Accommodate These Conditions

Condition or Symptom of Pregnancy	Comparable Medical Condition	What Could a School Do?
Fatigue during the first twelve weeks of pregnancy	Tiredness because of mononucleosis	Allow student flexibility in scheduling, if possible. Have a room available for the student to rest in (such as the first-aid room).
Nausea and morning sickness during the first months of pregnancy	Food poisoning, an ulcer, or gastrointestinal flu	Allow excused absences. Make arrangements so student can leave the room quickly with minimal disruption (such as a permanent hall pass). Make provisions for the student to make up missed work.

Question 8. If the school requires pregnant students to have a doctor's certification to participate in any class or activity, are the same requirements made of all other students with conditions requiring the attention of a physician?
If NO, describe the pregnancy requirements and how they differ.

Question 9. Does the school give pregnant students leave for as long as is medically necessary?
If NO, describe any limitations on this leave.

Frequent urination in pregnancy	Bladder infection, urinary tract infection	Make arrangements so that the student can leave the room with minimal disruption.
Lack of mobility in later months of pregnancy	Sports injury (such as a sprained ankle, where the student is on crutches) or arthritis that causes mobility problems	Provide an elevator pass. Allow the student to leave classes and other activities five minutes early. Excuse the student from physical education classes or other vigorous activities.
Recovery from normal childbirth	Recovery from a serious infection	Allow excused absences. Provide an elevator pass. Excuse the student from physical education classes and other vigorous activities.
Recovery from a cesarean section or difficult delivery	Appendectomy or other surgery	Allow excused absences. Provide an elevator pass. Excuse the student from physical education classes and other vigorous activities.
Doctors or medical visits necessary before and after	Medical visits necessary before and after surgery or illness	Allow excused absences. Allow the student flexibility in scheduling.

The final questions you need to ask overlap somewhat with previous questions. However, they are included because the Title IX regulation specifically addresses each issue. A NO answer to any question constitutes a Title IX violation.

First, if the school requires pregnant students to have a doctor's certification to participate in a class or activity, does the requirement hold for all other students with conditions requiring a physician's attention? (See **Question 8.**) There are three possible answers.

- The question does not apply, since medical certification is not required for any condition.
- Yes, certification requirements are the same for pregnant students as for other students.
- No, certification requirements are different for pregnancy.

If the answer is NO, describe the requirements for pregnant students and how those requirements differ. It would be discriminatory, for example, if medical certification were required for pregnant students, but not for students with other medical conditions, to go on field trips.

Next, find out what the medical leave policy is regarding pregnant students, and describe any limitations on it. (See **Question 9.**) The Title IX regulation requires that covered schools and programs grant a medical leave for pregnancy, even if they do not have an official policy on this issue.

Similarly, find out if pregnant students are free to return to school without penalty at the end of their pregnancy (a right specifically outlined in the Title IX

regulation); if not, describe what happens when they return. (See **Question 10.**)

You have now completed looking at the treatment of pregnant students in regular programs and activities. The next section addresses the treatment of pregnant students in special or separate programs.

Question 10. At the end of the leave, are pregnant students reinstated to the status that they held when the leave began?
If NO, describe what does happen when these students return.

Treatment of Pregnant Students in Special or Separate Schools, Classes, and Programs

Title IX *does* specifically allow separate classes and programs for pregnant students, as long as such classes are comparable to regular classes and programs. Many junior and senior high schools operate such programs. Few, if any, postsecondary institutions do.

There is a specific reference to this issue in the legislative history of the law. Senator Birch Bayh, often called the father of Title IX, said that the law

> would allow enforcing agencies to permit differential treatment by sex only [in] very unusual cases where such treatment is absolutely necessary to the success of the program—such as in classes for pregnant girls or emotionally disturbed students, in sports facilities or other instances where personal privacy must be preserved. [Senate, 1972, p. S2747]

That is, it appears that different treatment on the basis of sex is permitted *only* if it is "absolutely necessary to the success of the program."

Question 11. List each special class, program, or school available to pregnant students.

Some pregnant students who stay in school enroll in special programs or special schools for pregnant teens. Having—or not having—these programs is not in itself an indication that the school is in violation of Title IX or that it is providing inadequate opportunities for pregnant students. For example, a school district with no special program (but with sensitive and well-trained teachers and counselors) could well provide better services for pregnant teens than a special school with inadequately trained teachers and located at a site inaccessible to disabled students.

Because there are many potential equity problems in separate programs and schools, they need to be examined carefully in light of the educational needs and rights of students. To begin an examination, compile a list of the special schools, classes, or programs available to pregnant students. (See **Question 11.**) This could include separate schools, special courses or programs within the regular school, extra or supplementary programs that provide pregnant teens with information about such things as nutrition and child care, and other formal or informal courses or programs. You should be able to obtain this information from school publications, as well as from discussions with students, administrators, and teachers.

Question 12. Is participation for pregnant students *completely* voluntary (or is it required, strongly encouraged, etc., by the school)? Explain how pregnant students enroll in the program.

The Title IX regulation specifically says that participation by a pregnant student in any separate or segregated activity must be *completely* voluntary on her part. Therefore, for each program, determine whether participation is completely voluntary and how pregnant students enroll in it. (See **Question 12.**) If participation is *not* completely voluntary, there is a Title IX problem.

Question 13. Describe any other students who are in the program, and give the approximate number in each category.

Next, to determine whether the program is specifically for pregnant students or for a larger range of students, describe and enumerate the other students in each program. (See **Question 13.**) The range here is substantial. For example, pregnant students may be grouped in classes or special programs for disabled or emotionally disturbed students; students who are discipline problems; alcohol and drug abusers; or students with such problems as absenteeism, truancy, vandalism, or violence. If

Question 14. Describe any special services provided in conjunction with these programs.

Question 15. Describe any ways that programs offered pregnant students are not comparable to those offered other students.

Question 16. Provide other relevant information.

there are students other than pregnant students in the school or program but the pregnant students are segregated in special sections or classes, describe the situation. Also indicate if the proportion of minority or disabled students is higher (or lower) than the overall proportion in the school system. If so, there might be problems with discrimination on the basis of race and/or handicap (which is prohibited by Title VI of the 1964 Civil Rights Act and section 504 of the Rehabilitation Act of 1973).

To assess comparability of these special programs with the regular school program, find out what special services are provided in conjunction with these special programs. (See **Question 14.**) Services might include counseling, prenatal care, health monitoring, child care, transportation, or assistance in working with social service or other community agencies. Offering important support services *only* to those pregnant students who enroll in special schools or programs could have the effect of limiting the educational choices of pregnant students who remain in *regular* classes and programs even more than their pregnancies have already limited those choices. With this in mind, it is useful to identify ways to provide these services (either directly or by coordination and referral) to pregnant students who remain in the regular classroom as well.

Next, compare the content or curriculum of each program or class with that of the regular school program (including regular academic courses, special courses, and other programs). In some special programs, for example, prenatal exercise is the only physical education opportunity available [Zellman, 1981a, p. 38]. Compare these special courses and programs with programs offered to nonpregnant students. (See **Question 15.**) Although the Title IX regulation states that the instructional program in these special schools must be comparable, it is not unusual for instruction to differ in a variety of ways, such as having (a) a smaller range of courses (for example, college preparatory or honors classes may not be available to pregnant students); (b) different or additional course options or requirements for pregnant students;* (c) less qualified instructors; (d) few or limited extracurricular activities; (e) no academic credit for some courses (including courses required of the pregnant students); and (f) special rules or regulations for pregnant students. Describe and explain any way that the instruction is not comparable and disadvantages pregnant students.

Note that Title IX does not prescribe any curriculum—that is decided by each local community. However, Title IX does prohibit "noncomparable" instruction for pregnant students.

Finally, list other relevant information. (See **Question 16.**) This could include descriptions of any extra or special costs to the students; information about the organization or governance of the school to identify who has the power to change policies or practices; information about cooperative relationships with health and social service agencies; and information about the history of the program (when it was established, who took the lead in establishing it, how it is funded, etc.).

*Some special high schools offer pregnant students optional courses, such as sex education and child care, that are not available to nonpregnant students, either male or female. This does not violate Title IX as long as these courses are optional.

Availability and Quality of Pregnancy-Related Health Services

Title IX does not require schools to provide extensive health services for any students, including pregnant students. Rather, by forbidding discrimination on the basis of pregnancy, the regulation requires that the health needs of pregnant students be met to the same extent as the school meets the health needs of students having other medical conditions.

The school-based clinic model of health care—which provides comprehensive health services to students—has been cited as an especially effective way to reduce teenage pregnancy as well as handle other adolescent health problems effectively. Because of concern for the health of both the young mother and her offspring, some schools, especially at the secondary level, go somewhat further than this, providing more services for pregnant students than for the general student body. This is especially evident in special schools and programs for pregnant teens, where prenatal health services are incorporated into the program. This affirmative approach to meeting the health needs of these students would not violate Title IX.

To determine if there are problems regarding the health services the school provides to pregnant students, find out what health-related services the school provides to pregnant students and how many students used them last year. Such services might include referrals, counseling, pregnancy testing, general prenatal care, maintenance of health charts, Lamaze instruction, follow-up care, or other services. (See **Question 17.**) Providing these services, either directly or by referral, would appear to be encouraged by Title IX. One caution is in order, however: limiting eligibility to married students is not permissible under the Title IX standard.

Next, identify any ways—cost, location, hours, or other—that the services the school provides for pregnancy are *not* comparable to services provided for non-pregnancy-related disabilities. (See **Question 18.**)

* * *

In summary, it is important to examine four major areas when assessing Title IX compliance in the areas of pregnancy: (1) admission of pregnant students to programs and activities; (2) treatment of pregnant students in regular programs and activities; (3) treatment of pregnant students in special or separate schools, classes, and programs; and (4) availability and quality of pregnancy-related health services.

Evaluating programs and practices for sex equity under Title IX can help schools eliminate discrimination against pregnant and parenting students. While these activities can be an important part of the solution to these complex problems, simply complying with Title IX does not adequately address many important areas, such as the lack of child care and pregnancy-prevention efforts.

It is hoped that the Title IX evaluation described in this chapter will, by drawing attention to the special needs of these students, encourage changes that go beyond Title IX—from outreach programs to reenrolling parenting students who have dropped out of school, to cooperative arrangements with health and social service agencies to provide other services these students need.

Question 17. List any health-related services that the school provides to pregnant students, and estimate the number of students who used these services last year.

a. None.
b. Referrals to private and community health services.
c. Counseling.
d. Pregnancy tests.
e. General prenatal care.
f. Maintenance of health charts.
g. Lamaze instruction or exercise.
h. Follow-up care after delivery or termination of pregnancy.
i. Other. Specify.

Question 18. Describe any ways that services for pregnant students are *not* comparable to services provided for other conditions.

a. The cost is out of line.
b. The location of the services is different or inconvenient.
c. The hours of the services are different or more limited.
d. Other. Specify.

4

Sex Education and Birth Control Services and Programs

"I know many women who won't go near the health center because of its birth control phobia. . . . Some of my friends have been hassled [over the telephone] and many of us have decided it just wasn't worth it."

—A college student

Teens get most of their information about sex from peers. Over half of all 13 to 18 year olds report that they are not comfortable talking about sex with either parent and nearly three-quarters of teens report that they have never discussed birth control with their parents.

—Results of a 1981 study of 160,000 teenagers nationwide, Jane Norman, *The Private Life of an American Teenager*, pp. 42, 58

"Because of this particular service [birth control], the women who go to the health service center during the designated 'women's health clinic hours' are often openly harassed by some people in the residence hall. . . . [T]his reflects on everyone's problem—a stigma."

—A college student from Connecticut

"[It was] not very good because they didn't teach you what you wanted to know, or because the teachers were embarrassed and didn't tell it straight."

—The response of over half of all students who reported that they had had sex education in school, Jane Norman, *The Private Life of an American Teenager*, p. 55

Almost all (96 percent) of the 150 colleges provide some sort of counseling on sexual problems. Two-thirds provide at least some gynecological services to students, two-thirds provide contraceptive referral, a third provide actual contraceptive devices, almost three-fifths provide abortion referral.

—A 1981 study of colleges conducted by the *Chronicle of Higher Education*, Lorenzo Middleton, p. 4

"A surprising amount of women who come here know virtually nothing about sex. The boys in the fraternities want to know things like

what VD is and what to look for, what herpes is, and what goes on when you have an abortion."

—Sex-education instructors at a major university with a sophisticated student body

Introduction

Since 1982, when this chapter was originally drafted, sex education and birth control services in schools and colleges have received increased attention. The spread of AIDS and the AIDS virus and the growing awareness of the problems surrounding teenage pregnancy have provided the impetus for more extensive sex education and family-life education programs in public schools (including elementary and secondary schools), as well as colleges and universities. The movement to encourage adolescents to "say no" to early sexual intercourse has continued to grow—as has the realization that, no matter what we say or do, many adolescents will sometimes "say yes."

The consequences of saying yes, even once, can be severe, and include too-early parenthood (which frequently leads to an interrupted education and diminished long-term earning power) or infection with the AIDS virus (which can lead to illness and death). Because of this, there are new demands—from the U.S. surgeon general to local communities—for providing comprehensive sex education in schools and colleges, teaching "safe sex" practices, and having birth control services that are more readily available to this young and vulnerable population.

Sex education and birth control services have historically focused more on girls than boys. After all, girls, not boys, become pregnant and girls, not boys, typically assume the majority of parenting responsibilities. This bias has been reflected in the placement of sex education and family life education courses in home economics departments, which have predominantly female students. Courses for "teen parents" are frequently limited to teen *mothers*—and may even exclude teen *fathers*. And most current birth control methods (with the exception of the condom) are female oriented.

While this orientation remains, it is starting to change—in part because boys as well as girls can contract AIDS, and in part because of a growing movement to foster sexual responsibility among males. One good reason to look at sex education and birth control services from a sex-equity perspective is to identify and eliminate inappropriate differential treatment of boys and girls.

Supporters and opponents of sex education frequently stake their position on the belief that sex education has a significant effect on the sexual behavior of adolescents. However, research does not support that direct link between knowledge and behavior. Instead, studies suggest that sex education as it is currently taught has little, if any, effect on the decision of young people to initiate sexual activity [AGI, 1986, p. 150]. Just as taking a civics course does not automatically make a person a good citizen, taking a sex education course does not automatically make a person sexually responsible. At the same time, a person *without* knowledge (about government or about sex) is ill equipped to be a responsible citizen or to exhibit responsible sexual behavior.

Myths and misinformation about pregnancy, contraception, and sexuality abound among students of all ages—elementary school, middle school, high school, and college. More often than not, young people learn about these issues from equally misinformed peers, rather than from parents or in the schools. The teenage

pregnancy rate remains too high, and unplanned pregnancies by college students are common. A review of studies by social scientists—or a long conversation with a group of students—will confirm that students have serious information gaps when it comes to sex.

There is not general agreement, however, regarding what, if anything, a school or college should do to change this situation—either to offer sex education programs or to provide direct birth control and family planning services. Some people believe that schools have a responsibility to provide students with correct factual information in these areas. Others believe that schools should help students learn how to resolve these issues for themselves. Some people believe that schools, especially at the college level, should provide direct services—from counseling and referral to birth control devices and prescriptions. And some people believe that these matters should be dealt with only at home, or by the church or religious group of the student. Students themselves overwhelmingly favor teaching sex education in the schools. For example, 96 percent of the high school student leaders attending the 1982 meeting of the National Association of Student Councils favored teaching sex education in the schools [NASC, 1982, p. 1]. A much smaller percentage, however, actually receive sex education instruction. In all, according to a 1986 Harris poll, only 59 percent of teenagers report that they have had a formal course or class in sex education in school—and only 36 percent have had a course that could be called comprehensive [Harris, 1986, p. 47].

The American College Health Association encourages institutions to provide comprehensive services regarding human sexuality. In a resolution adopted in 1973, the organization took the position that "any comprehensive health program should make provisions for counseling and services related to human sexuality, including conception control, utilizing medically recognized pharmaceuticals and methods of pregnancy prevention, as well as abortion counseling and referrals" [ACHA, 1973, p. 1]. The American School Health Association has also advocated responsible family life and sex education in the elementary and secondary schools for most of its fifty years of existence.

Most colleges make information about pregnancy, contraception, and other sexual matters available to their students. Colleges typically also provide gynecological services and counseling for sexual problems. At the elementary and secondary school levels, many students receive at least minimal instruction in school on menstruation and reproductive anatomy. Less than 10 percent of schools, however, provide comprehensive sex education instruction [Kirby, 1979, pp. 7–8].

In addition, many colleges provide direct birth control and contraceptive services to students. These services include prescriptions for diaphragms and birth control pills, peer sexuality seminars, one-on-one birth control counseling, and free condoms for either female or male students.

At the elementary and secondary levels, a handful of schools provide direct contraceptive services. There has been much debate about school-based health clinics, some (but not all) of which provide direct birth control services. In fact, there is no single school-based clinic model. Rather, each is unique: some provide birth control services, while others do not; some provide social services as well as health services; most, but not all, are run by agencies other than the school system; and their funding sources range from federal funds to local dollars to foundation grants [CPO, 1986, p. iii].

Although the debate has been vigorous, the number of health clinics in schools is comparatively small. At the end of 1987, there were about 120 such clinics across the country—and not all of these clinics provided birth control services [CPO,

1988]. At the same time, the school-based health clinic movement is symbolic of a larger trend, that of schools playing a larger role in ensuring that young people receive the health services they need.

Many secondary schools provide some type of counseling regarding birth control; often this counseling is informal and based more on a student's relationship with a teacher or the school nurse than on a formal program or policy of the school [Kirby, 1979, p. 6].

In a comprehensive 1987 report on adolescent pregnancy and sexuality, the National Research Council noted that there had been no systematic review of *elementary* school curricula. According to a 1984 study by Douglas Kirby, very few schools include sex education in the early grades—and those that do generally focus on correct names for body parts, reproduction in animals, family roles and responsibilities, and basic social skills. While some schools provide sessions in the fifth and sixth grades on the physical and emotional changes that accompany puberty, few cover such issues as dating and intercourse [Hayes, 1987, pp. 144–45].

Title IX and Sex Education and Birth Control Services and Programs

Title IX leaves a lot of room for local decision making with regard to sex education and birth control programs and services. For example, Title IX does not mandate a specific program, class, or curriculum in sex education, nor does it require a school to provide birth control, family planning, or other services. Each college, school, school district, or state makes those decisions for itself. Title IX is a civil rights law and, as such, does not impose one choice or the other on schools. Rather, the law simply requires that decisions be applied equitably to female and male students.

Even if an elementary or high school does have sex education or human sexuality courses or instruction, the Title IX regulation specifically allows elementary and secondary schools to separate the boys and the girls for this part of the course. (Title IX does not require that the sexes be separated here—it just allows it.)*

The detailed provisions of the Title IX regulation are outlined in appendix A. Several other points addressed in the regulation are worth noting here as well.

- The fact that more women than men use family planning or birth control services does not mean that these services are "discriminatory" and violate Title IX. The regulation states that the law does not prohibit a school "from providing any benefit or service which may be used by a different proportion of students of one sex than the other, including family planning services."

- A college controlled by a religious organization is exempt from any part of the Title IX regulation that is inconsistent with the organization's religious tenets.

- Title IX neither requires nor prohibits the use of any particular textbook or curricular materials.

*The regulatory history of Title IX's exemption for human sexuality instruction is discussed in more detail in chapter 2.

The pages that follow first discuss Title IX and equity in *sex education and birth control information programs*. These programs are offered at all education levels—from elementary schools to colleges and universities. Next, Title IX provisions as they apply to equity in *direct service birth control programs* are discussed. A few high schools offer these services, and they are commonplace at the college or postsecondary level.

Equity in *sex education information services* can be evaluated by looking at (1) admission and accessibility to programs and services, (2) treatment of students in programs and services, and (3) materials used in programs and services. Similarly, regarding *birth control services*, sex equity can be assessed by evaluating (1) admission and accessibility to programs and services and (2) treatment of students in programs and services. With this in mind, move ahead to examine these areas in detail.

Question 1. Does the school have any programs, courses, classes, or other instruction dealing with sex education, human sexuality, and/or birth control?

Sex Education Information Services

Many schools, from elementary schools to universities, have decided to provide some sort of sex education program or information to their students. Providing or not providing any sex education services or human sexuality programs is not in itself discriminatory—or nondiscriminatory. You must look further to see if the information available to and the treatment of females and males are equitable.

Basic Information. In assessing equity, the first step is to find out if the school or college provides any services in this area. Use the chart entitled "Sex Education and Birth Control Services and Programs" in appendix B to collect this information.

Ask if your school has any programs, courses, classes, or other instruction dealing with sex education, human sexuality, and/or birth control. (See **Question 1.**)

If the answer is NO, then there is most likely not a sex-equity problem, although it could be argued that not providing any such services disproportionately affects females. If an institution does not provide any programs in this area, it is useful to examine the reasons for this decision and to evaluate if they are still valid. The fact that a school or college does not have a Title IX problem does not mean that there are not other problems. It is worth taking a second look to see if the school should deal more directly with the very real issues of providing information to students about sexuality and pregnancy.

If the answer to Question 1 is YES, then it is necessary to look further to see if these programs are sex fair. First, it is helpful to gather some basic information about the courses or programs—who administers them and, in a general sense at least, what areas they cover.

There is an almost endless variety of ways in which sex education courses can be conducted. For example, at the elementary-secondary level, they might be mandated by the state, as is the case in such states as New Jersey and Maryland. They could be taught after school hours as an optional program. They could be called everything from "family life science" to "human physiology" to "sex education." And they could cover a wide or narrow range of subjects.

At the postsecondary level, sex education information could be provided through the student health service, the counseling service, the women's center, or an outside organization. At this level, participation is voluntary and the topics are often more controversial, covering areas from orgasm to homosexuality to abortion.

Question 2. List each course or program.

a. List those open to both sexes. (Include only programs where *all* parts of the program are coeducational.)
b. List those for females only. (Include programs if *any portion* is single sex.)
c. List those for males only. (Include programs if *any portion* is single sex.)

Question 3. What grade levels or classes participate in each course or program?

Question 4. What is the form of the program (e.g., class, unit)?

Question 5. What department, group, or unit inside or outside the school provides the course or program?

Question 6. What general subjects are covered?

The second piece of basic information you want to get about sex education programs concerns who is enrolled. (See **Question 2.**) Here you are asked to list each course or program under one of three headings, depending on whether it is totally coeducational, for females only, or for males only. Be as specific as possible—for example, "Biology 101," "sophomore Family Life Science class," "sexual awareness workshop offered by Planned Parenthood," "conference held during freshman orientation," and "physical education classes." This information will begin to provide an idea of how extensive the programs are and whether or not there are equity problems.

At the elementary and secondary levels, Title IX specifically states that it is permissible for schools to offer sex education instruction separately for boys and girls. This does not hold true at the postsecondary level unless a Title IX exemption (such as affirmative action) applies. In addition, the fact that one small part of a course or program deals with human sexuality does not exempt the entire course from Title IX's requirement for coeducation; only that portion dealing with human sexuality can be single sex.

The list you developed for Question 2 should give a preliminary idea of the extent to which any programs are single sex and whether or not the types of courses and programs available to both sexes are approximately equal.

Next, look at the age or grade level of students enrolled in each of these programs. (See **Question 3.**) For example, is a program or course open only to freshmen or is it open to any student in the school? Notice especially any differences in the pattern of programs for males compared with those for females. Continue to record this information on the chart in appendix B.

Look at the form that each program or course takes, paying special attention to significant differences between that for females and that for males. (See **Question 4.**) Is it, for example, a separate class? a special workshop or training program? or a unit or part of another class or course? These are only some of the possible answers. Be as specific as possible.

Look further to determine what department, group, or unit inside or outside the school provides the course or program. (See **Question 5.**) For example, sex education or human sexuality instruction could be provided by the science or biology department staff, the student health service or school nurse, the counseling department or mental health services, the physical education department staff, the home economics or family life science department, Planned Parenthood, a social services agency, or other groups (specify which groups). None of these answers automatically constitutes a Title IX violation in covered programs. If the programs for females and males are taught by people in different departments or groups, with the result that the content and quality of the information students receive varies greatly, there is a Title IX question.

To get an idea of whether the types of information are equitable for both sexes, look at the general subjects covered. (See **Question 6.**) Possible answers are

- the physiology and anatomy of reproduction for both sexes
- female reproductive issues (e.g., menstruation, breast cancer)
- male reproductive issues (e.g., testicular cancer)
- childbirth
- interpersonal relationships

- sexuality and sexual feelings
- general information about birth control
- information regarding AIDS and other sexually transmitted diseases
- training on how to use specific birth control methods
- other subjects (specify what these other subjects are)

Here again, look for different patterns for females and males in order to identify potential problem areas.

Finally, identify other important information or differences. (See **Question 7.**) See if there is a different pattern between programs for females and programs for males. For example, are programs for one sex held during school hours and those for the other sex held after school hours? Or are instructors for one sex paid, while those for the other sex are volunteers?

Question 7. Specify other important information or differences.

Question 8. Indicate the total number of students in each course or program. Then indicate what percentage is female.

Question 9. Is the number of females and males roughly proportional?

Question 10. If the numbers are not approximately equal for females and males, give the school's rationale or reasons for the disproportion.

Admission and Accessibility to Programs and Services. A key issue regarding equal opportunity in sex-education information programs is admission to them in the first place. The fact that a program is single sex does not in itself make the program discriminatory or in violation of Title IX. As outlined earlier in this section, there are several specific exceptions in the regulation that allow some sex segregation.

In looking at admissions to programs and courses and accessibility to them, the first issue to examine is the total number of students and the percentage of female students in each course or program. (See **Question 8.**) Keep recording this information on the chart in appendix B.

Next, look at these numbers and percentages and ask whether composition of females and males is roughly proportional. (See **Question 9.**) If it is, there is probably not a problem with admission to these programs. This does not mean, however, that there is not a problem with sex discrimination in the *treatment* of students enrolled in programs and classes.

Additionally, a disproportionate number of one sex (most likely, females) in these programs does not necessarily mean that there is sex discrimination, as long as participation in the program is totally voluntary and there is not biased tracking by counselors or other school personnel. Look further to see *why* the numbers are skewed. (See **Question 10.**) Reasons that might be given include:

- The program or portions of the program qualify for the single-sex exemption for human sexuality classes at the elementary or secondary level.
- More equal participation would violate a religious tenet of the religious organization that controls the college.
- The makeup of the class is a result of voluntary affirmative action taken by the school to overcome the effects of past discrimination or limited participation by one sex or the other.
- The disproportionate participation is based on voluntary student choice.

All the above reasons are, under Title IX, legitimate "nondiscriminatory"

Question 11. Describe any other differences between females and males regarding admission or accessibility.

reasons for having single-sex programs, or programs that disproportionately serve one sex. Other possible answers, each of which would be discriminatory under Title IX unless one of the specific Title IX exemptions applied, are as follows:

- At the elementary and secondary level, it is state, local, or school policy that portions of classes other than those "dealing exclusively with human sexuality" are sex segregated. (Obtain a copy of the policy, and specify what other classes or portions of classes are sex segregated.)
- At the college level, these classes or programs (including portions dealing with human sexuality) are sex segregated. (The exemption in the regulation applies only to the elementary and secondary levels.)
- It is college policy to separate students by sex for any instruction regarding human sexuality.
- The teacher wanted the students to be separated by sex.
- It has always been done that way.
- Counselors or teachers track students into (or out of) the program. (This is specifically prohibited by the regulation.)
- It is a part of the physical education program or home economics program (that is single sex). (The regulation specifically requires that these programs be coeducational.)
- The admission standards or procedures are different for girls and boys.

Next, see if there are sex differences in admission and accessibility to these programs. (See **Question 11.**) Areas where there could be differences are as follows:

- Parental notification or permission requirements (for example, if permission were required for girls, but not boys, to participate in the program).
- Convenience of time and location (for example, if the program were difficult for one sex to get to because of the location of the dormitories for that sex).
- Other (for example, if the course were required for girls but not for boys; if it were a credit course for girls but not for boys; or if it counted toward graduation requirements for only one sex).

That concludes the areas to look at with regard to admission. Now move ahead to look at treatment in programs.

Treatment of Students in Programs and Services. Even if both sexes are admitted to a program in a nondiscriminatory manner, or if it is permissible under Title IX for the programs to be single sex, there can still be sex-equity problems. That is, a school or college might treat boys and girls, men and women, differently once they are in a program.

To determine if this is a problem, look more closely at both coeducational programs and programs that are single sex. For the former, identify any differences in treatment of females and males; for the latter, identify any ways that parallel programs are not comparable. (See **Question 12.**) Some possible findings are as follows:

- Only one sex receives credit for the course, or there is no comparable program for the other sex.
- The course is required for one sex but elective for the other.
- The course counts toward graduation requirements for one sex but not for the other.
- Only girls are required to take certain sections (other than sections that deal exclusively with human sexuality), such as child care.
- One sex is required to complete different or additional assignments.
- Instructors make disparaging or harassing remarks or "jokes" about women.
- Different course content and subjects are covered.
- Instructors are not equally qualified.
- Other (specify).

All these differences are sex discriminatory under Title IX. Using the chart in appendix B, record any differences found in coeducational and/or single-sex programs.

Next, identify the school's reasons for these differences. (See **Question 13.**) To do this, refer to Question 10 (the reasons for differences in admissions and accessibility). The same allowable (and nonallowable) reasons apply here as well.

Materials Used in Programs and Services. Title IX neither requires nor prohibits the use of any particular textbook or curricular materials. The regulation specifically says:

> *Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.*

This provision was added at the last minute, when the final regulation was published. In making this change, HEW said that it

> *recognizes that sex stereotyping in textbooks and curricular materials is a serious matter. However, the imposition of restrictions in this area would inevitably limit communication and would thrust the Department* [HEW, now the Department of Education] *into the role of Federal censor.* [OCR/HEW, 1975, p. 24135]

Question 12. Look closely at both coeducational programs and single-sex programs.

a. For *coeducational programs*, describe any discriminatory or different treatment of females and males.
b. For *single-sex programs*, describe any ways that parallel programs are not comparable.

Question 13. Give the school's rationale or reason for this different treatment.

Question 14. List each textbook, curriculum, study guide, or other materials used.

Question 15. Describe any biases, stereotypes, or discrimination in the materials.

Question 16. Does the school provide any birth control or family planning services?

Question 17. Identify and list each birth control and family planning service.

This official explanation went on to explain that HEW wanted "to avoid potential conflicts with the Constitution"; to cover textbooks and curricular materials under Title IX "might place [HEW] in a position of limiting free expression in violation of the First Amendment" [OCR/HEW, 1975, p. 24135].

Given this background and the specific language in the regulation, it is clear that Title IX does not require a school to review the course content and materials to identify and eliminate bias. At the same time, there is nothing that *prohibits* a school or someone else from doing so. In fact, to gain public support for these programs and to diffuse criticism, many schools have a parent or parent-teacher committee review and recommend materials used in sex education classes.

Some parents have protested bias in the materials and textbooks schools have used in these programs. One concerned mother wrote in 1977 that her ten-year-old daughter arrived home with "the same patronizing, negative booklet which she had been given in 1952!"

To continue your review of materials, list each textbook, curriculum, study guide or other materials used. (See **Question 14.**) Next, review these materials to identify any biases or stereotypes on the basis of sex, as well as race, handicap, national origin, and so on. (See **Question 15.**) Possible problems are that (a) the materials are not equally appropriate to boys and girls; (b) they contain inaccurate or incomplete information; or (c) the pictures or illustrations perpetuate stereotypes or biases.

The fact that the materials contain some biases does not necessarily mean that they cannot or should not be used. It is possible to use biased materials in an unbiased way, through, for example, developing supplementary materials and training teachers to use problems in the materials to stimulate discussion among students.

The information gathered should provide a fairly complete picture of whether or not there is bias in these programs. Correcting problems may require training teachers and counselors, as well as making specific programmatic changes.

Birth Control and Family Planning Services

Next, examine any birth control services that the school or college provides for equity.

Basic Information. The first question to ask in assessing equity in these services is whether the school provides any birth control or family planning services. (See **Question 16.**) If the answer is NO, then it is not necessary to read the rest of this chapter. Title IX does not require that any school provide these services. Nevertheless, an institution that does not provide any services may want to review this section anyway, to either affirm or reassess its decision.

If, however, the answer is YES, then a further examination of the specific services provided is in order. Look for equivalent treatment of both sexes in (a) admission and accessibility to programs and services and (b) treatment of students in programs and services.

Before looking at each of these items, however, it is useful to gather some additional basic information about these services. Start by identifying specific birth control and family planning services provided by the school. (See **Question 17.**) Possible services include:

- referrals to private or community resources or clinics
- information about birth control methods
- counseling or assistance in making decisions about birth control
- providing nonprescription birth control devices (such as condoms and foam)
- prescribing birth control devices (such as the diaphragm or the pill)
- training in how to use a specific birth control method
- information on male birth control methods
- follow-up services and checkups
- other services (specify what the services are)

Question 18. What department, group, or unit provides the service?

Question 19. Indicate the total number of students who use each service. Then indicate what percentage is female.

Question 20. Describe any differences between females and males regarding admission or accessibility.

Describe each service completely enough to compare it for females and males. Be sure to include any services aimed at *males*.

Once the services are identified, for each service, ask what department, group, or unit provides it. (See **Question 18.**) Possible answers include the student health service or school nurse, peer student counselors, the counseling department or mental health services, Planned Parenthood, a social services agency, the women's center or a women's group, the men's center, or other groups (specify who).

Admission and Accessibility to Programs and Services. To determine if there are equity problems, an examination of who is served by programs is in order. Begin by finding out the total number of students who use each service. Then determine what percentage is female. (See **Question 19.**)

It may not be possible to get absolutely accurate figures. But, through observing, looking through health service reports, and talking with students and providers, it should be possible to make an estimate. You will most likely find that female students are the primary or the only users of these services because most methods of birth control are female centered, rather than male centered. This is not in itself a Title IX violation.

Next, determine whether there are any differences in admission or accessibility to females and males. (See **Question 20.**) Possible differences include parental notification or permission requirements; and males (or females) being excluded from certain services. Note that this latter difference may be justifiable for reasons of personal privacy, for affirmative action purposes, or (at the elementary to secondary level) for instruction regarding human sexuality.

Treatment of Students in Programs and Services. Regarding treatment of students in birth control and family planning services, there are two possible ways that sex-based inequities could appear. The most obvious manifestation would be to treat females and males differently for the same service (for example, charging women, but not men, for birth control counseling). A less obvious, but more frequent inequity involves treating family planning services differently from how other services are treated; this disproportionately affects women, since they are the primary users of these services. (An example would be charging full price for birth

Question 21. Describe any discriminatory or different treatment of females and males, or treatment that has a disparate impact on one sex or the other.

Question 22. Give the school's rationale or reasons for any different treatment.

Question 23. Identify and describe any other equity or discrimination problems in admission or accessibility to or treatment in family planning services for minority or disabled females.

control devices and pills, while providing other prescription medication free or at a reduced cost.)

With these possible differences in mind, identify any discriminatory or different treatment of females and males, or treatment having a disparate impact on one sex or the other. (See **Question 21.**) Possible findings are that (a) the cost of family planning services to the student is out of line, compared with that of other health services; (b) the location of the services is inconvenient (compared with that of other health services); (c) the hours of the services are especially limited; (d) men (or women) are refused services; and (e) counselors or health care providers moralize and lecture women who seek family planning services. For each finding, give specific information. For example, explain exactly how the cost of family planning services is out of line compared with the cost of other types of student health care, and indicate the dollar amounts.

Next, find out the school's reasons for such differences in treatment. (See **Question 22.**) Refer to the text accompanying Question 10 for possible answers to this question.

One final point to address is the issue of availability of birth control and family planning services to minority and disabled students, especially females. For example, if these services are offered in a walk-up clinic in a building with no elevator, they are not accessible to the disabled student in a wheelchair. Similarly, unless providers of services are sensitive to cultural differences, they may not reach Hispanic, Asian, or Black women. With this in mind, determine whether any other equity or discrimination problems exist in admission, accessibility, or treatment with respect to minority or disabled females and family planning services. (See **Question 23.**) Possible problems include the following:

- Family planning services are provided only in older buildings that are not accessible to students in wheelchairs.
- The providers of the services are not trained to provide services to disabled students.
- Disabled students, especially students with mental disabilities, are disproportionately counseled to be sterilized.
- Language-minority students cannot obtain information or services because literature is not available in their language or the health providers do not speak their language.
- The family planning providers are unaware of or insensitive to important cultural issues. For example, Asian or Hispanic women may find it especially difficult to discuss family planning issues with a man, with the result that they do not seek services they need.

* * *

While important, assessing sex equity under Title IX in sex education information services and birth control services is complicated somewhat by the relatively large number of exceptions and exemptions. In general, equity in *sex education programs* can be evaluated by examining admission and accessibility to programs and

services; treatment of students in programs and services; and materials used in programs and services. Similarly, sex equity in *birth control and family planning services* can be assessed by evaluating admission and accessibility to programs and services, and treatment of students in programs and services.

5

Gynecological and Reproductive Health Care

The nurse told her that she "should quit fooling around." When the student told the nurse that she was not sexually active, the nurse replied "Sure."

—An Illinois student telling of a classmate who went to the university's gyn-nurse with repeated vaginal infections

"Gynecological care [in contrast to all other routine health services] was paid for on a fee-for-service basis. Students complained about limited hours, greater expense, and lack of empathy from older male physicians. . . . These doctors were uncomfortable with sexuality issues, which in turn led to the occurrence of gross misdiagnosis."

—A student at a large northeastern university

Students at a private Ohio college complained that women had to schedule pelvic examinations months in advance and that the doctors gave them unduly rough examinations and asked prying or sexually harassing questions during examinations.

"A lot of women don't know what a pap smear means. They want to know the difference between a pelvic exam and a pap smear. And they want to know if a pelvic exam is painful."

—A peer sex-educator at a West Coast college

"Unfortunately, the gynecological consultants do not even read the evaluations after a clinic examination. And most of the student complaints . . . have been about the attitude or lack of sensitivity of the gynecologists."

—An administrator at an Ivy League college after the administration conducted a student evaluation of health care in response to student complaints

One in eight women on campus has been raped. One in every twelve men admits to having forced (or tried to force) a woman to have intercourse—that is, one in every twelve men admits to raping or attempting to rape a woman.

—Results of a 1985 study of seven thousand students on thirty-two campuses, in Jean O'Gorman Hughes and Bernice Sandler, *"Friends" Raping Friends: Could It Happen to You?*, p. 1

Introduction

Reproductive health care, including gynecological care, is of special significance in examining equity in health services for women and men, girls and boys. On the one hand, women bear children, have monthly menstrual cycles, and have routine reproductive health needs that are unique to their sex—men simply do not have comparable needs that are as great or as obvious. As a consequence, health care systems (no matter what the level) that ignore or slight reproductive and gynecological health care inherently disadvantage women compared with men. This is why the Title IX regulation specifically says that any school, college, or other "recipient" that provides full-coverage health services must provide gynecological care.

On the other hand, because reproductive health care is often viewed as a "women's issue," men's reproductive health needs may be overlooked or underestimated. For example, while it is routine for girls and women to be taught *breast* self-examination to detect cancer, it is relatively rare for boys and men to be taught *testicular* self-examination to detect cancer. The issue of AIDS has helped to raise the level of awareness of the importance of reproductive health issues, including avoiding and treating sexually transmitted diseases, for males as well as females.

Judging sex equity in reproductive health care often appears to be as much an art as a science. Doing exactly the same thing for boys and girls (men and women) when their needs are in fact quite different is certainly not equity. Providing a few services for each sex is similarly unlikely to be equitable, since girls typically have greater needs: these "few services" might be sufficient for males, but not for females.

The Title IX regulation provides some guidance in this area. And although a strictly legalistic approach will not guarantee equitable reproductive health services, the law can provide a good starting point for school and college administrators, students, and health care providers as they seek an equitable mix of reproductive health services.

As the examples above show, it is not difficult to find horror stories of inadequate or discriminatory reproductive health care. At the same time, it is also not difficult to find colleges and schools that provide high-quality, sensitive care for their female and male students. In fact, college health services are often much more receptive to consumer-oriented change than the typical doctor or health care provider is. Many student health services have postvisit evaluation questionnaires and student health advisory committees. Many are funded by student fees and have to make their case for funding each year before the student government or a student committee. And many report to a student affairs dean or vice-president who is concerned that both students and parents be satisfied with health services, as well as with other nonacademic aspects of college.

Myths and misconceptions regarding gynecological and reproductive health care abound. For example, when the president of a large southwestern university was urged to expand the college health service to include gynecological care, he reportedly replied indignantly: "No! We only have good girls here." He ignored the fact that even "good girls" need gynecological care. A few years later, this institution had a different president and a fairly comprehensive health care program, including gynecological care, for students.

Good health care for women of childbearing age requires routine gynecological care: even women who are not sexually active need gynecological services. The American College of Obstetricians and Gynecologists recommends that all women

have annual gynecological examinations at least by the age of eighteen, or when they become sexually active, and ideally before they become pregnant for the first time [ACOG, 1982, p. 45]. Men, on the other hand, simply do not need gynecological care, nor do most men have any comparable routine health need of this magnitude. As a result, if a school or community met all routine health needs except gynecological needs, it would probably be fully meeting the health needs of males but it would *not* be fully meeting the health needs of females.

In addition to gynecological care, reproductive health services can also include a range of other services used by both sexes, such as routine and emergency examinations and treatment and health education for a range of reproductive health concerns (from sexually transmitted diseases to cystitis to examinations of women for breast cancer and of men for testicular cancer).

While few elementary or secondary schools provide gynecological and reproductive health services, many colleges do. In fact, two-thirds of the 150 colleges surveyed in 1981 by the *Chronicle of Higher Education* reported that they provided gynecological services to students. This same study found that women's health services were used as much as, or more often than, they were five years earlier. Forty-one percent of the institutions reported that these services were used more than they were in 1976, and 23 percent more reported that there had been no change in the usage rate over this time [Middleton, 1981, p. 4].

Title IX and Gynecological and Reproductive Health Services

The Title IX regulation requires that school and college health services that provide "full coverage health service" provide gynecological care. Many colleges and universities, but few elementary and secondary institutions, provide comprehensive or full-coverage health services to their students.

In addition, it can be argued that even if a student health service does not provide full-coverage health service, the institution must meet the gynecological needs of female students to the same degree that it meets the routine primary health needs of students in general. This interpretation is consistent with general Title IX principles, although it has not been tested either in court or through administrative decisions.

The explanatory materials accompanying the 1975 publication of the final Title IX regulation offer guidance regarding what gynecological services an institution that furnishes full-coverage health service must provide. The text explains:

> [The regulation] *requires that if full coverage health service is offered by recipients it must include gynecological care. This requirement should not be interpreted as requiring the recipient to employ a specialist physician. Rather, it is the Department's intent to require only that basic services in the gynecological field such as routine examinations, tests and treatment be provided where the recipient has elected to offer full health service coverage. Any limitations on health services offered cannot be based on sex.* [OCR/HEW, 1975, p. 24133]

There is no clear definition by the Office for Civil Rights of exactly what constitutes "full coverage health service," the condition that triggers the requirement for an institution to provide gynecological care. It would be reasonable to

Question 1. Does the school provide full-coverage health service?

define full-coverage health service as a basic or routine health service.

Some colleges covered by Title IX may qualify for a religious exemption from some aspects of gynecological services.

In assessing whether or not the gynecological and reproductive health services an institution provides are equitable on the basis of sex, examine (1) the extent of gynecological services and the treatment of students who receive these services (compared with other health services) and (2) admission, accessibility, and treatment of students who use other reproductive health services.

With this description of Title IX coverage of reproductive and gynecological health services in mind, take a look at these services to assess them for sex equity.

Gynecological Services

Using the chart entitled "Gynecological and Reproductive Health Care" in appendix B, record your responses to the questions discussed below.

The first question to ask regarding gynecological services is whether the school provides full-coverage health service. (See **Question 1.**)

If the answer is YES, then the Title IX regulation requires that the school provide gynecological care. The American College of Obstetricians and Gynecologists defines this care to include taking a medical history, conducting a physical examination, and performing appropriate laboratory tests. This care need not be provided by a physician—it can be provided by nonphysician specialists, such as nurse practitioners.

If, however, the answer is NO (that is, the school does *not* provide full-coverage health service), then it is necessary to examine the services to determine if the institution meets the gynecological needs of female students to the same extent as it meets other student health needs.

Whether the answer is YES or NO, look further. To determine if the gynecological health services available are comparable to other health services in terms of extent, quality, cost, and convenience, survey the services offered by the institution. Compare services available for most routine nongynecological health problems (such as colds, infections, injuries, and allergies) with services available to meet the gynecological needs and reproductive health needs of women.

To compare gynecological services with other routine health services, look at the extent, level, availability, and costs of gynecological and other health services, including physical examinations and routine treatment, laboratory tests and procedures, and emergency services. These categories constitute Questions 2, 3, and 4. Using the chart in appendix B, obtain information about each of these categories for nongynecological and gynecological services and record your findings in the appropriate column. Then assess the comparability of these services and record this in the last column.

To evaluate comparability, look at each of these three types of health services in more detail. First, look at physical examinations and routine treatment. (See **Question 2.**) Examine the services provided, including their accessibility and cost (**item a**). For example, for routine (nongynecological) health care, list the services provided, such as general care for colds and infections; examinations and care for allergies, injuries, and so on; or referral to community health care providers. For gynecological care, list the services provided under the column that begins: "Services available to meet the *gynecological* and reproductive health needs of women."

Next, look at the providers of services for both nongynecological and gynecological health problems and determine their general level of expertise (**item b**). For example, a nurse, general practitioner, gynecologist, or physician's assistant might provide these services. The fact that different people (or people with different credentials) provide the service does not indicate inequity if the health care providers are equally qualified and competent. The fact that a woman's health clinic provides gynecological care and the general health service provides other care does not necessarily mean that services are not sex equitable.

Next, look at the costs to the student for both nongynecological and gynecological services and record this information on the chart in appendix B (**item c**). For example, is a routine examination covered by the student health fee or general institutional funds, is it covered by the student health insurance policy, or is a fee-for-service charged to the student? Evaluate whether costs (and how they are covered) are comparable for gynecological and nongynecological services. Is, for example, gynecological care more likely to be on a fee-for-service basis? If so, there may be sex-equity problems.

Now examine schedules, identifying what days and hours the services are available (**item d**). If possible, give specific schedules (for example, 9:00 A.M. to 5:30 P.M. on Monday through Friday or 1:30 to 3:00 P.M. on Saturday, Sunday, and holidays). Indicate any restrictions that could affect females and males differently, such as "male varsity athletes only, Tuesday 3:00 to 6:00 P.M."

Finally, look at other issues, such as convenience of location and accessibility for disabled students (**item e**). Again, having equally inconvenient locations for gynecological and nongynecological care is not discriminatory. At the same time, any service that is not physically accessible to disabled students may mean that the institution is not in compliance with section 504 of the 1973 Rehabilitation Act, which forbids discrimination on the basis of handicap.

The next area to examine for equity is laboratory tests and procedures. (See **Question 3.**) As with the previous section, first look an nongynecological health needs, then at gynecological health needs—and record your findings in the appropriate columns. Then, in the last column, compare nongynecological to gynecological services and record your conclusion.

To evaluate comparability, start by examining what tests are available and their costs, looking for disparities between gynecological and other health services provided by the institution (**item a**). If no tests are available, simply write "none." If, however, tests are available, outline what the tests are and the cost to the student. Sex-equity problems arise if, for example, the school provides tests and screening for most routine health concerns but not for routine gynecological tests (such as pap smears), or if there is a cost for gynecological tests but not for other tests.

Next, move ahead to look at other aspects of laboratory tests and procedures and to compare those provided for gynecological problems with those provided for other problems (**item b**). These differences could include who provides the service, the convenience of schedule or location, coverage of the cost by the student health fee or insurance, and accessibility for physically disabled students. Describe relevant characteristics for both types of services, noting differences.

If there are substantial differences, there may be sex-equity problems. For example, if most routine laboratory tests are available five days a week at no charge through the on-campus student health service but routine gynecological tests are available for only a few hours a month at a distant clinic (and their cost is not covered by the student health fee), there are certainly inequities.

Question 2. Physical examinations and routine treatment.

a. Briefly describe the physical examination and treatment services provided and how extensive they are.
b. Specify who provides the services, and indicate their general level of expertise (high, average, low).
c. Specify the cost to the student, and who or what covers this cost.
d. Specify the days and hours when services are available.
e. Indicate any other relevant information or differences (such as the convenience of the location or accessibility for physically disabled students).

Question 3. Laboratory tests and procedures.

a. List each test available and the cost to the student.
b. Indicate relevant information or differences between services for routine health concerns and gynecological services (such as providers, schedules, insurance coverage, and accessibility).

Question 4. Emergency services.

a. Describe emergency or acute care available to students.
b. Indicate relevant information or differences (such as providers, schedules, insurance coverage, and accessibility).

Question 5. Provide the following information:

a. List reproductive health services not already described.
b. Describe any differences between services available to women and services available to men.
c. Describe ways these services are not comparable or equitable for women and men.

The next area of gynecological care to examine for equity is emergency services. (See **Question 4.**) To assess comparability in this area, examine the emergency or acute care available to students for both routine health care and gynecological care (**item a**). Such care could include, for example, (a) providing infirmary or hospital treatment on campus, (b) having specialist physicians on call or on retainer, (c) providing services for victims of rape and domestic violence, (d) referring cases to other health care providers in the community, or (e) providing transportation to hospitals or emergency rooms.

Examine these services, and note relevant information or differences—for example, regarding who provides the services, the convenience of the schedules or location, coverage of the cost by the student health fee or insurance, and accessibility for physically disabled students (**item b**).

You are now ready to move ahead to look at other reproductive health services.

Other Reproductive Health Services

In addition to inequities in gynecological services, there could also be inequities in other reproductive health services—those aimed at men, women, or both sexes. (See **Question 5.**) Because the health needs of women in this area are greater and because men are less likely to seek care aggressively, relatively few institutions offer any extensive program of reproductive health services specifically for men. One such program for men was the Men's Awareness of Sexual Health (MASH) program at the University of Massachusetts at Amherst, which combined health education and outreach efforts with direct services for men.

To assess equity in this area, first identify any reproductive health services not already described (**item a**). These services could include physical examinations and routine treatment, laboratory tests and procedures, and emergency and acute care services. Examples are outreach to identify young men whose mothers took DES during pregnancy, examinations for testicular cancer, and instruction in testicular self-examination. Record your findings on the chart in appendix B.

Next, find out if there are differences in services available to women compared with those available to men (**item b**). An obvious difference is if services are available to only one sex, although both sexes need them. Other differences could include such things as who provides the service, the convenience of the schedule or location, coverage of the cost by the student health fee or insurance, accessibility for physically disabled students, and accessibility for language-minority students.

Finally, note how the services are not comparable or equitable for women and men (**item c**). The fact that there are some differences does not necessarily mean that there is sex discrimination. For example, the fact that a separate women's clinic provides gynecological care while care for men is provided through the regular health service does not necessarily constitute discrimination, if the services are comparable in accessibility, cost, quality, and so on.

* * *

Discriminatory or demeaning treatment in the area of reproductive health has been frequently reported by female students who use campus health services. At the same time, many institutions have extensive and well-run programs to meet these health needs of their female students. To assess the gynecological and reproductive health services an institution offers, examine (1) the extent of gynecological services and

the treatment of students who use these services (compared with other health services) and (2) admission, accessibility, and treatment of students who use other reproductive health services.

6

Student Health Insurance

A West Virginia college with a $15,000 limit on expenses for illnesses provided no coverage whatsoever for pregnancy.

Female varsity athletes at an East Coast university were not insured for sports injuries, while the male athletes were.

At a Mississippi college, an optional maternity benefit plan was available for $275 annually and provided up to $500 in benefits for childbirth. Regular health insurance cost students $46 and provided benefits of up to $2,000.

*Students at a Missouri university filed a Title IX complaint against their institution because the student health insurance policy specifically excluded pregnancy, childbirth, and miscarriage. The federal Office for Civil Rights found that the policy violated Title IX.**

Another college excluded single women from receiving maternity and pregnancy benefits.

Introduction

Most colleges, but few elementary and secondary schools, offer health insurance policies to their students. These policies have become increasingly important to students, especially female students, in recent years for a variety of reasons. Once, most college students were "traditional" students (that is, males between the ages of eighteen and twenty-two) and most were covered by their parent's health insurance policy. Female students constituted a relatively small percentage of college students and an even smaller percentage of students pursuing a graduate or professional degree.

Today, however, the situation is very different. More than half of all female students are older than the "traditional" eighteen- to twenty-two-year-old student, with the result that more students than ever before are in their prime childbearing

*More recently, over 1,800 complaints have been filed with the federal Office for Civil Rights, claiming pregnancy discrimination in student health insurance policies. The passage of the Civil Rights Restoration Act makes clear that student health insurance policies must treat pregnancy the same as other medical conditions, even though these policies are not directly funded with federal money.

years. The fact that more women are pursuing higher degrees today also means that even those women who *began* their college career at the traditional age may continue their education well into their twenties. Also, fewer students (either male or female) of traditional age are covered by their parents' employer-provided health insurance today; as a cost-containment measure, many employers now provide health insurance coverage for the *employee* only, not family coverage. Finally, many women enter or reenter college in their thirties, an age when an increasing number of women become mothers. (Overall, two-thirds of all students over age thirty-four are women.) Finally, these "older" women who attend college part-time are the least likely to have employer-provided health insurance on their own—and the most likely to hold low-paying jobs with few benefits [Dunkle, 1985, p. 1].

All these issues make pregnancy coverage in student health insurance policies an issue of access for women to higher education—not just an academic equity concern.

The student health insurance offered by most colleges does *not* treat pregnancy as it treats other medical conditions. Possible manifestations of sex discrimination in health insurance policies include the following:

- excluding pregnancy coverage altogether
- charging additional fees or premiums for this coverage*
- excluding complications of pregnancy or related conditions, such as ectopic pregnancy or cesarean section
- denying pregnancy coverage to unmarried women
- excluding female disorders (such as gynecological problems of young women whose mothers took DES during pregnancy) from coverage, while covering male disorders
- providing lower benefits for female than for male athletic teams
- excluding conditions especially prevalent in females, such as scoliosis

In evaluating how policies fare from a sex-equity perspective, it is important to remember that equity is relative: compliance with Title IX in a covered program is not based on the overall quality of the coverage in the policy. For example, a policy with low benefits that apply equally to all medical conditions, including pregnancy, is sex equitable and in compliance with Title IX. In contrast, a policy with higher benefits but providing lesser coverage for pregnancy is not sex equitable and would not be in compliance with Title IX.

Title IX and Student Health Insurance

Student health insurance policies, like other benefits schools make available to their students, are covered by Title IX. There are four major areas where there could be discrimination in student health insurance policies: (1) treatment of pregnancy and

*Often this costly coverage still provides a *lower* benefit, compared with the coverage for other conditions.

pregnancy-related conditions (by far the most severe area of insurance discrimination), (2) treatment of gynecological and reproductive services, (3) coverage of other health services and accidents, and (4) insurance coverage of athletic accidents and injuries.

Each of these areas will be discussed following a review of Title IX coverage regarding insurance. Appendix A outlines in detail the specific provisions of the Title IX regulation.

Student health insurance policies offered by schools covered by Title IX must be free of sex discrimination and treat pregnancy as they treat other medical conditions. Specifically, regarding student health and insurance benefits and services, the Title IX regulation says:

> *In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate* [the standards set forth in the section of the regulation dealing with employment discrimination] *if it were provided to employees of the recipient. This section* [of the regulation] *shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.*

Most of the sex-equity problems regarding insurance revolve around coverage of pregnancy and reproduction. In short, Title IX requires that pregnancy, childbirth, and recovery be treated as other temporary disabilities or medical conditions are treated. (These provisions are described in more detail in both appendix A and chapter 3.)

An institution controlled by a religious organization may be exempt from providing nondiscriminatory insurance if a specific insurance provision otherwise required by Title IX would not be consistent with the religious tenets of the controlling organization.

Additionally, the Civil Rights Restoration Act contains an abortion provision that states that institutions are not required "to provide or pay for any benefit or service . . . related to an abortion." Colleges are free under Title IX, however, to provide abortion coverage in their student health insurance policies if they so wish.

The fact that a school contracts with an insurance company to provide this benefit, rather than offering it directly, does not change the obligation of the school to ensure nondiscrimination. An institution covered by Title IX cannot assist others in discriminating on the basis of sex. The regulation says that unless there is a specific exception elsewhere in the regulation, a school cannot provide any discriminatory aid, benefit, or service to a student. The regulation states that institutions cannot

> *[a]id or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;* [or]
>
> *[o]therwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.*

Further, the Title IX regulation requires schools to ensure nondiscrimination in those programs, such as insurance programs that they do not directly operate. If these outside programs do discriminate, the institution cannot "facilitate, require, permit, or consider" participation in them by its students or employees.

As described above, this section of the Title IX regulation (governing health and insurance benefits for *students*) incorporates by reference the standards in the regulation for these benefits for *employees*. The employment section of the regulation (a) details standards for ensuring that fringe benefits are not discriminatory and (b) contains prohibitions against discrimination on the basis of marital status, parental status, or pregnancy (and related conditions) similar to those included in the section pertaining to students.

A more detailed look at what the provisions contained in the employment section of the Title IX regulation say about fringe benefits will be helpful in understanding the parallel provisions regarding students. The regulation defines fringe benefits as

> *any medical hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to* [the section of the regulation dealing with "compensation" or salary].

The regulation then goes on to say that an institution shall not

> *[d]iscriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;* [or]

> *[a]dminister, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex.*

The next section walks you through a data collection process to determine if student health insurance policies are sex equitable. The charts entitled "Student Health Insurance" in appendix B should help you gather and record this information.

Basic Information

To determine whether or not a student health insurance policy is sex fair, first get a general picture of the policy's coverage. Then compare the general coverage with that available to women or for female-specific problems or conditions. Obtain a copy of all relevant information regarding the student health insurance policy, including the following:

- any informational materials or brochures describing the policy and coverage
- a copy of the detailed policy or contract itself
- information regarding the "verified loss" (that is, the amount or percentage of money that the insurance company pays out in claims, excluding administrative costs and profits)

- relevant claims forms and applications forms
- whether or not the institution qualifies for a religious exemption in the insurance area
- other relevant information

Next, gather some baseline information regarding the health insurance policy, including the insurance company's name and address (**Question 1**); contact information on who at the school is responsible for administering and negotiating the policy (**Question 2**); the annual cost of the basic policy for individual students (**Question 3**); and the annual cost of additional, but nonpregnancy, coverage that can be purchased (e.g., high-option or family coverage) (**Question 4**). Record this information on the chart "Student Health Insurance" in appendix B. You will gather additional specific information regarding the policy's coverage under Question 7.

Question 1. Name and address of insurance company.

Question 2. Name(s) and telephone number(s) of school personnel responsible for administering and negotiating the policy.

Question 3. Annual cost of the basic policy for individual students.

Question 4. Annual cost of additional coverage that can be purchased (other than pregnancy coverage), such as high-option coverage, family coverage, and other coverage.

Treatment of Pregnancy and Pregnancy-Related Conditions

Pregnancy discrimination in student health insurance policies is the norm, rather than the exception. Three frequent ways that health insurance coverage is discriminatory are in (a) eligibility for coverage and benefits, (b) the cost of the coverage, and (c) the extent or scope of the coverage. The primary test for determining if a health insurance policy is sex equitable is whether or not pregnancy is treated the same as other medical conditions. This test mirrors the test used for pregnancy discrimination in employment under Title VII of the 1964 Civil Rights Act.

Title IX does not require that an institution provide any health insurance coverage at all. The law simply requires that if an institution does provide health insurance coverage for temporary disabilities, the "temporary disability" or medical condition due to pregnancy and related conditions be treated and covered the same as other medical conditions.

Therefore, the *same treatment of pregnancy* could be nondiscriminatory at one institution and discriminatory at another. For example, if one institution's health insurance policy covered up to $500 for any medical condition or temporary disability, including pregnancy, it would be in compliance with Title IX. In contrast, another institution that also covered up to $500 for pregnancy but up to $1,000 for other medical conditions or temporary disabilities would not be in compliance with Title IX.

How to evaluate student health insurance policies against the Title IX standard for pregnancy discrimination may at first be unclear because insurance policies do not generally use the Title IX terminology "other temporary disabilities." Policies typically discuss coverage in terms of illnesses, sicknesses, and accidents. Although it is somewhat confusing to think of pregnancy as an illness, sickness, or accident, these three terms generally define how "other temporary disabilities" are treated under the policy. Therefore, to determine if a specific policy is discriminatory regarding pregnancy, compare the pregnancy coverage with the coverage available for other medical conditions (illnesses, sicknesses, and accidents) in all these respects, as described below. Make this comparison and ask whether eligibility for coverage and benefits for pregnancy and pregnancy-related conditions is the same as for other medical conditions. If eligibility differs, ascertain how it differs for pregnancy and pregnancy-related conditions. (See **Question 5**.)

Question 5. Is eligibility for coverage and benefits for pregnancy and pregnancy-related conditions the same as for other medical conditions?
If NO, describe how eligibility differs for pregnancy and pregnancy-related conditions.

Question 6. Is the cost of insurance for pregnancy and pregnancy-related conditions included in the cost of the *regular* student health insurance policy (even if this coverage is more limited than the coverage for other medical conditions)?
If NO, describe any specific pregnancy coverage that students can purchase, even if it is less comprehensive than coverage for other conditions. Also, indicate the cost of any additional coverage.

Some possible ways in which eligibility criteria could discriminate or treat pregnancy differently are as follows:

- Single women or unwed mothers are not eligible to receive pregnancy and pregnancy-related benefits.
- There are fewer times per year when this pregnancy coverage can be purchased.
- Spouses or other family members are not covered for these conditions (or are covered at a lower level), although they are covered for other temporary disabilities.
- In order for a female student to receive these benefits, her husband or partner must also be covered by the insurance plan, even though no similar requirement is made for any other condition.
- Only students who purchase "family coverage" are eligible for these benefits.
- Proof of pregnancy and/or proof of delivery are required, but similar requirements are not made for other conditions.
- Pregnancy and pregnancy-related conditions are treated differently from how other preexisting conditions are treated (for example, there is a longer waiting period for eligibility).
- Pregnancy must be both conceived and delivered during the period the person is insured, but more generous standards are applied for other temporary disabilities.
- The grace period for covering pregnancy and pregnancy-related conditions after the insurance expires is different from the grace period for other temporary disabilities.
- Other (describe any other way in which eligibility for coverage or benefits for these conditions differs from that for other temporary disabilities).

Different eligibility standards for coverage and/or benefits for pregnancy and pregnancy-related conditions are almost certainly *discriminatory* eligibility standards. In all the examples above, eligibility for coverage and benefits for pregnancy and pregnancy-related conditions differs from eligibility for other medical conditions. For example, an insurance policy that excluded all spouses and family members for all conditions (including pregnancy) would be sex fair; however, a policy that excluded only pregnancy benefits (or provided them at a lower level) for family members would not be sex fair.

Next, look at the cost to students of insurance coverage. Find out whether the cost of insurance for pregnancy and pregnancy-related conditions is included in the cost of the regular student health insurance policy (even if such coverage is more limited than that for other medical conditions). (See **Question 6.**) If it is included, there may still be problems with sex discrimination in eligibility (above) or the extent or scope of coverage (below). For example, if pregnancy and pregnancy-related conditions are covered but are covered at a lower level than other medical

conditions are, the insurance policy would not be complying with Title IX standards.

If, however, pregnancy and pregnancy-related conditions are totally excluded from the regular policy, then almost by definition the policy does not comply with the Title IX standard. In this instance, there are undoubtedly problems with the eligibility and scope of the policy as well. Determine whether there is any specific pregnancy coverage that students can purchase, even if it is less comprehensive than coverage for other conditions, and find out the cost of the additional coverage. (You will have the opportunity to detail any differences in the scope of coverage when you answer the next question.) Some possible findings for Question 6 are as follows:

- None. Coverage for pregnancy and pregnancy-related conditions is excluded altogether and cannot be purchased under any circumstances.
- Coverage for some or all pregnancy and pregnancy-related conditions can be purchased under a "high option" or "family plan," which costs $_____ a year.
- A female student can purchase coverage for some or all of these conditions, but it costs her $____ additional a year for pregnancy coverage.
- A male student can purchase this coverage for his wife for an annual cost of $____, although the cost of coverage for other medical conditions is included in the regular plan.
- Other (describe any other additional costs for coverage of pregnancy and pregnancy-related conditions; be sure to indicate the annual dollar amount of these costs).

Any of these NO answers is most likely sex discriminatory, since each treats pregnancy and pregnancy-related conditions differently from other medical conditions by imposing an additional fee or premium for this coverage. There are, however, two possible instances when this treatment might not violate the Title IX standard for equity: (a) when the institution (not the student) paid the cost of the additional insurance for these conditions, and (b) when the institution self-insured for these conditions (that is, when the institution did not include pregnancy and pregnancy-related conditions in the regular policy but paid claims for these conditions itself, out of a special self-insurance fund set up for this purpose). In both these cases, the determination of nondiscrimination assumes that the eligibility and benefits for pregnancy and pregnancy-related conditions are the same as those for other medical conditions. If this is the case, then the school is probably in compliance with Title IX.

The next, rather extensive question asks you to describe all ways that coverage for pregnancy and pregnancy-related conditions *and* gynecological and reproductive services differs from that for other medical conditions. (See **Question 7.**) Using appendix B to help gather this information, start with the first column and, for each category (**items a–p**), describe the coverage generally—that is, describe the *coverage for other medical conditions* (illnesses, sicknesses, and accidents).

Next, for pregnancy and pregnancy-related conditions, describe the *coverage for pregnancy and pregnancy-related conditions* in each category. Once you have done this, compare this coverage with that for other medical conditions, and ask: Is the coverage exactly the same or is it different from other medical conditions?

Question 7. Describe all ways that the coverage for pregnancy and pregnancy-related conditions and gynecological and reproductive services differs from the coverage for other medical conditions (accidents, illnesses, and sicknesses).

a. No differences; exactly the same in ALL respects.
b. Maximum dollar limit on benefits.
c. Maximum dollar benefit per incident.
d. Amount of deductible.
e. Amount of co-payment.
f. Conditions that are specifically excluded.
g. Schedule or method for determining reimbursable or covered costs.
h. X-rays, laboratory and other tests, and medication coverage and cost to the student.
i. Coverage of in-hospital and out-of-hospital expenses.
j. Coverage of physical exams, diagnostic services, and routine or preventive care.
k. Length of coverage after the event (e.g., illness, surgery, delivery).
l. Coverage of specialists' fees.
m. Restrictions, if any, on the basis of marital status.
n. Time limits on preexisting conditions.
o. Maximum number of hospital days allowed.
p. Other (describe any other ways that the coverage differs).

Then, for each category, do the same thing for gynecological and reproductive services. That is, first describe the insurance coverage of these services. Then compare this coverage with that for other medical conditions and indicate if it is exactly the same or if it is different.

Finally, for each category, provide any other useful explanatory information or details, such as a description of specific differences or the reason given for differences.

The first possible category in the left-hand column indicates no differences; coverage is exactly the same in all respects (**item a**). Unfortunately, relatively few institutions will be able to check this category and move on to the next question. Even if you think that this is the correct category, carefully examine all the other categories that identify ways in which the scope or extent of coverage could be different or discriminatory. Many of these differences are so commonplace that they are unnoticed unless the detailed provisions of the policy are carefully scrutinized.

Compare every facet of the coverage of pregnancy and pregnancy-related conditions and gynecological and reproductive services with coverage for illnesses and other medical conditions to identify discriminatory treatment. Table 6.1 contains a listing of some of the major areas where there might be discrimination, followed by examples of how pregnancy discrimination might manifest itself.

Table 6.1. Ways Student Health Insurance Policies Treat Pregnancy Differently than Other Medical Conditions

Area	Examples
Maximum dollar limit on benefits (**item b**).	A $5,000 maximum for sicknesses, accidents, and other medical conditions; a $150 limit on pregnancy.
Maximum dollar benefit per incident (**item c**).	A $1,000 limit for most illnesses; a $100 limit for pregnancy.
Amount of deductible (**item d**).	A $50 deductible for all illnesses; an additional deductible of $100 for pregnancy.
Amount of co-payment (**item e**).	After the deductible, the student pays 20 percent of the costs for illnesses but 50 percent of the costs for pregnancy.
Conditions that are specifically excluded (**item f**).	In addition to exclusions that fall relatively equally on both sexes, there are numerous exclusions that affect women only or disproportionately. Common discriminatory exclusions are complications of pregnancy, false labor, ectopic pregnancy, cesarean section, prenatal and postnatal care, and miscarriages. Another exclusion is not covering pregnancy-related difficulties that arise after birth, while covering subsequent complications for other medical conditions.

Schedule or method for determining reimbursable or covered costs (**item g**).	"Usual, reasonable, and customary" costs are paid for illnesses and other medical conditions, but there is a strict dollar limit, often of $100 to $500, for pregnancy, or there is a stricter standard for pregnancy costs.
X-rays, laboratory and other tests, and medication coverage and costs to the student (**item h**).	All tests and procedures judged necessary by the doctor are covered for illnesses and other medical conditions; specific pregnancy-related tests such as sonograms and amniocentesis are excluded.
Coverage of in-hospital and out-of-hospital expenses (**item i**).	Office or clinic procedures are covered for other temporary disabilities but not for pregnancy and pregnancy-related procedures.
Coverage of physical exams, diagnostic services, and routine or preventive care (**item j**).	Routine exams are generally covered, but pre- and postnatal exams are excluded.
Length of coverage after the event (e.g., illness, surgery, delivery) (**item k**).	Coverage continues after surgery, but no postnatal costs are covered.
Coverage of specialists' fees (**item l**).	Specialists' fees are covered for other conditions but not for pregnancy.
Restrictions, if any, on the basis of marital status (**item m**).	Marital status has no effect on coverage of most medical conditions, but only married women are covered, or fully covered, for pregnancy.
Time limits on preexisting conditions (**item n**).	Most preexisting conditions are covered after a three-month waiting period, but the waiting period for pregnancy coverage is nine months.
Maximum number of hospital days allowed (**item o**).	A maximum of twenty-one days is allowed for most medical conditions, but only four days are allowed for pregnancy.
Other (describe any other ways that the coverage differs) (**item p**).	The cost of a private room is covered for most medical conditions, but only a semiprivate room is covered for pregnancy; only certain abortions are covered, while other conditions, such as drug overdose or injury while committing a robbery, are covered.

Treatment of Gynecological and Reproductive Services

Information regarding discriminatory insurance coverage of gynecological and reproductive services should also be summarized in Question 7 on the "Student Health Insurance" chart in appendix B. Examples of possible discriminatory coverage are the following:

Question 8. What, if any, additional exclusions from coverage, limitations, or conditions apply only to one sex or have a disproportionate impact on one sex?

- Excluding female-specific or reproductive disorders (such as endometriosis or dysmenorrhea [menstrual cramps]) from coverage while including most other disorders.
- Excluding problems related to contraception (such as difficulties with an intrauterine device [IUD]), while including most other problems.
- Excluding such female tests as pap smears from coverage, but covering other routine tests (or charging a relatively higher rate for female tests).
- Covering fees for urologists and urological examinations but not for gynecologists and gynecological examinations.
- Covering a vasectomy for a man but not sterilization for a woman, or vice versa, or routinely covering sterilization for one sex but covering it for the other sex only if it is "medically necessary."
- Specifically excluding problems of students whose mothers took the drug DES during pregnancy (while this can cause problems in both sexes, the problems are more common and generally more severe in females).
- Covering all or some of the costs of all medication except that related to contraception for women (excluding contraception altogether might also be discriminatory, since this would have a disproportionate effect on females).

Coverage of Other Health Services and Accidents

Although other forms of discrimination in health insurance are not unheard of, they are relatively rare. To determine if a school's policy is discriminatory in the other conditions it covers, find out what, if any, additional exclusions from coverage, limitations, or conditions there are that apply only to one sex or that have a disproportionate impact on one sex. (See **Question 8.**) Possible overt discrimination includes the following:

- The wives of male students are eligible to be covered as dependents, but the husbands of female students are not (or the cost or scope of coverage is different depending on the sex of the student).
- Health concerns and needs common to gay men are covered, while those common to gay women (lesbians) are not.
- A specific condition is covered for one sex but not for the other.

Additionally, there may be problems with discrimination in the insurance coverage if a condition that appears more frequently (or more severely) in one sex than in the other is treated differently or excluded. For example:

- If the policy excludes lupus or scoliosis, there may be a sex-equity issue, since these conditions are much more frequent in females.

- If hyperactivity is excluded, there may be a sex-equity issue because this condition is much more common in males.

Another exclusion or exception from coverage that does not fall equally on both sexes (or all races) is an exclusion for AIDS. Currently, most AIDS patients are male, although the number of females with the AIDS virus or AIDS is increasing. In addition, a disproportionately high number of women with AIDS are minority women. And, excluding AIDS might constitute discrimination on the basis of handicap, in violation of section 504 of the Rehabilitation Act.

As colleges take a Title IX look at insurance coverage, they should check for other equity problems as well. Does the policy ignore the requirement of many states to cover newborn care, as well as pregnancy? Are disabling conditions treated in a way that violates section 504 of the Rehabilitation Act? (For example, does the plan contain a specific exclusion for injuries sustained during a suicide attempt?) Are older students denied health insurance coverage in violation of the Age Discrimination Act?

Coverage of Athletic Accidents and Injuries

In examining equity in health, accident, and injury insurance available for student athletes, the first thing to do is to obtain and examine a copy of the policy or policies. Find out whether coverage for all-female and all-male teams and athletes is exactly the same. (See **Question 9.**) If it is, there is probably not sex discrimination in this area. If, however, it is not, look further at the differences.

To assess such differences, examine how the coverage differs and whether males or females have the most comprehensive coverage with respect to insurance companies, eligibility requirements, deductible amounts on dollar limits, extent of coverage, support personnel, cost to female and male athletes, and other factors. (See **Question 10.**)

Next, make note of any exclusions especially important to women (such as sports gynecology or pregnancy). (See **Question 11.**) And if one or more teams get special or extra coverage, identify them and note what extra coverage they receive. (See **Question 12.**)

Also, take a look at the budget information to see if any cost to the student is equivalent for the female and male teams. There may be a Title IX problem if female students have to pay for all or part of their insurance, while the school pays the cost for male athletes.

The comparison in the sports area is fairly simple. If the coverage for female and male athletes is not exactly the same, look at the differences to see if there is a nondiscriminatory justification for them.

* * *

Student health insurance policies frequently discriminate against females, especially in coverage of pregnancy and pregnancy-related conditions. Assessing Title IX compliance with student health insurance policies is a good way to determine whether these policies are sex equitable. Four areas must be examined to identify sex discrimination in student health insurance: (1) treatment of pregnancy and

Question 9. Is the coverage for all-female and all-male teams and athletes *exactly* the same?

Question 10. If NO, describe or explain how the coverage differs, and indicate whether the males or the females have the most comprehensive coverage. For example, there may be the following:

a. Different insurance companies (this *may* not be relevant, but it makes it more likely that the policies are not equal).
b. Different eligibility requirements.
c. Different deductible amounts or dollar limits.
d. Different extent of coverage (for example, are women covered only during games, while men are covered for practices and when not competing, as well as during games?).
e. Different coverage of support personnel (such as managers or trainers).
f. Different cost to female and male athletes.
g. Other differences (specify what these other differences are).

Question 11. Describe any exclusions especially important to women (such as sports gynecology or pregnancy).

Question 12. If any team(s) gets special or extra coverage, identify the team(s) and describe this extra coverage.

pregnancy-related conditions, (2) treatment of gynecological and reproductive services, (3) coverage of other health services and accidents, and (4) coverage of athletic accidents and injuries.

7

Sports Medicine

Students commonly report that female athletes have access to training services only at inconvenient hours. A female athlete at a Texas college reported that the athletes on the women's team were allowed the services of a trainer only at 8:00 A.M.

Two Ohio schools had Title IX complaints filed against them because the whirlpools were located in the boys' locker room and female athletes did not have ready access to them.

A large northwestern university had an on-site doctor for the men's, but not the women's, basketball games—with the result that injured male players got quick medical attention, while their female counterparts did not.

At a Washington, D.C., university, the coordinator of women's athletics reported that the men had a full-time athletic trainer to teach male athletes how to prevent sports injuries. However, the female athletes had to rely on a teammate to provide training services.

At a Connecticut institution, while the women theoretically had some access to the men's training room, the fact that the male athletes generally wore no clothes while using the training room effectively prevented female athletes from using these facilities.

Introduction

School sports programs—from romping on the playground to high-intensity intercollegiate athletics—are as American as apple pie. And although males have traditionally enjoyed the larger piece of this pie, there has been substantial progress for females since Title IX became law in 1972.

The increase in athletic participation by women and girls was dramatic in the 1970s. For example, in 1970–71, 7 percent of all participants in high school sports programs were girls; eight years later, this number had increased to 32 percent. And by 1983–84, 35 percent of the more than 5.1 million high school athletes were women—more than 1.7 million female high school athletes [NFSHSA, 1984, p. 77].

Similarly, the number of women participating in intercollegiate athletic and college intramural programs more than doubled from 1971 to 1976. Thirty percent

of all intercollegiate athletes were female in 1980–81 [NCAA, 1981, pp. 1–2]. By 1983–84, 31 percent of the more than 273,300 varsity athletes at National Collegiate Athletic Association (NCAA) institutions were female. This is more than twice the number of female athletes in 1971–72, when 16 percent of all athletes were female [NCAA, 1974, pp. 5, 13; NCAA, 1984a]. In 1983–84, 35 percent of the varsity athletes at colleges belonging to the National Association of Intercollegiate Athletes were women; 65 percent were men [NAIA, 1984a].

In all, after a sharp rise in athletic participation by women in the 1970s, the numbers leveled off in the 1980s. This can be attributed to many factors, including less vigorous federal enforcement of Title IX provisions regarding athletics in the 1980s and the *Grove City* decision, which was in effect from 1984 to 1988. (During this time, few athletic programs were covered by Title IX because relatively few athletic programs and facilities *directly* receive federal funding. Since the 1988 passage of the Civil Rights Restoration Act, Title IX clearly covers athletic programs in schools and colleges that receive *any* federal funding.)

Well-trained and conditioned athletes are less likely to be injured than their untrained counterparts. Despite this, the quality of health care for students participating in physical education classes, intramural programs, varsity athletics, and other sports activities has historically received relatively little attention. At the same time, athletic injuries are common problems among children and adolescents. In 1980, for example, 1.8 million children ages five to fourteen experienced athletic injuries [Rutherford, 1981, p. 1]. A 1979 report by the U.S. surgeon general in *Healthy People* reported that

> most accidents among older children are accounted for by recreational activities and equipment. . . . For [children ages] 12 to 17, the leading causes [of injury] included football, basketball, and bicycle riding. Contact sport injuries, it should be noted, often involve injuries to the mouth and teeth—and the aftereffects and treatment may be long and costly. [PHS/HEW, 1979b, pp. 4–11]

There were more than a million athletic injuries in school and college sports programs in 1975–76, with women receiving 23 percent of the injuries, according to a congressionally mandated study. At the varsity sports level, women were 29 percent of the athletes but received only 16 percent of the injuries. For all types of sports, the injury rate for men was substantially higher. In football, an average of 28 percent of players were injured, compared with less than 8 percent for *all other sports*, contact or noncontact, female or male [NCES/HEW, 1979, pp. ix, 33].

At the same time, more recent national data from the NCAA confirm that female, as well as male, athletes frequently sustain injuries and need training and preparation to avoid them. For example, the 1985–86 injury rate per thousand "athlete-exposures" was 9.38 for women's gymnastics, compared with 6.81 for football. (That is, more than nine out of every thousand female gymnasts were injured, compared with less than seven out of every thousand football players.) Similarly, the *surgical* injury rate for women's gymnastics was double that for football—1.04 per thousand, compared with 0.47 per thousand for football [NCAA, 1986, table 7].

While many of the athletic health concerns for boys and girls, for men and women, are the same, a significant number of the concerns differ—because of the different sports girls and boys play, physical differences between the sexes, and the different stage of development of sports programs for boys and girls. Because of

this, one cannot apply a cookie-cutter solution to determining sex equity in sports medicine and training. Rather, it is important to look at the training and sports medicine needs of individual female and male athletes and teams.

Title IX and Sports Medicine: The Rules of the Game

Title IX's sweeping provisions regarding athletic equity cover all levels—from high-level intercollegiate teams to interscholastic (high school) sports to intramurals, club sports, and physical education classes. See appendix A for a complete summary of the provisions in the regulation.

Although good sports medicine and training are important for the health of student athletes, Title IX does not require that any school provide these services. The Title IX regulation lists the "provision of medical and training services" as one of the factors that the director of the Office for Civil Rights "will consider" in determining whether or not an institution is providing female and male athletes with overall equal opportunity. Also, the Office for Civil Rights issued an important Intercollegiate Athletics Policy Interpretation in 1979, explaining that a college's compliance with Title IX in the sports medicine area will be determined by examining the equivalence for men and women of

- availability of medical personnel and assistance
- availability and qualifications of athletic trainers
- availability and quality of weight, training and conditioning facilities
- health, accident, and injury insurance [OCR/HEW, 1979, p. 71417]

In explaining this policy, then-HEW Secretary Patricia Roberts Harris said that the government

> will evaluate an institution's program by determining whether men's and women's athletic programs make athletic benefits available in an equitable way. HEW will evaluate the availability of those benefits, the quality and nature of those benefits and how the provision of such services affects the treatment and future opportunities of athletes. It is important to note that [the government] is not requiring that benefits—such as locker facilities or coaching staffs—be identical; we will, however, compare programs, to determine whether policies and practices provide equivalent opportunities throughout men's and women's sports programs.

This standard that the Office for Civil Rights published for assessing equity under Title IX is viewed by some people as being a bare minimum. It allows unequal opportunities in some areas if the school can prove that the discrimination is "insubstantial," "justified," or the result of nondiscriminatory factors. As a result of this relatively flexible Title IX standard, a school that the Office for Civil Rights deems to be in compliance with Title IX may fall short of being in compliance with a more strict state human rights law or state equal rights amendment.

In making Title IX judgments in the area of athletics, it is important to

Question 1. Types of medical assistance and services.
a. Physical exams.
b. Routine health care.
c. Aid for injuries (at home and away games and at practices).
d. Availability of emergency and ambulance services (at home and away games and at practices).
e. Availability of medical supplies (at home and away games, practices, and other times).
f. Follow-up care for injuries.
g. Specialist care (such as orthopedists or sports gynecology care).
h. Other services (such as taping, proper fitting of equipment; specify the services).

Question 2. List teams receiving each service or type of assistance.
a. Men's teams.
b. Women's teams.

remember to *compare female sports opportunities with male sports opportunities.* There is a temptation to compare women's sports opportunities at one school or college with women's sports opportunities at another school or college: this is *not* a valid comparison to make in judging equity.

Also, to make a valid comparison, *one must compare all sports opportunities for males (including football) with all sports opportunities for females.* There is no exemption for football or other so-called revenue-producing sports under Title IX.

Following is a discussion of the specific health-related issues addressed in the Intercollegiate Athletics Policy Interpretation. The provisions regarding health, accident, and student injury insurance are discussed in chapter 6. The following pages primarily address intercollegiate athletics, the most complicated and controversial area in athletic opportunity. The questions can, however, be relatively easily modified to apply to services at the elementary and secondary levels, to club and intramural activities, and to physical education programs.

Availability of Medical Personnel and Assistance

Most intercollegiate and interscholastic athletic programs offer some sort of medical personnel and assistance—at games, at practices, and off the playing field. Often, however, medical personnel and aids are available only to men's teams, or only to some of the men's teams. For example:

- At one Midwestern high school, the medical supplies were stored in the boys' locker room, with the result that female athletes did not have ready access to them.

- A public university in the Northwest agreed, in settling a complaint of sex discrimination, to let female athletes and coaches know about preventive and injury-related medical services in order to ensure nondiscriminatory access to them.

To determine if the availability of medical personnel and assistance is equal for female and male athletes, first look at what specific health services are available to each team. Using the chart entitled "Sports Medicine" in appendix B to help gather information, list the types of medical assistance and services—physical exams; routine health care; aid for injuries (at home and away games and practices); availability of emergency and ambulance services (at home and away games and practices); availability of medical supplies (at home and away games, practices, and other times); follow-up care for injuries; specialist care (such as orthopedists or sports gynecology care); and other services (such as taping, proper fitting of equipment; specify the services). (See **Question 1.**)

The determination of sex fairness under Title IX depends on the relative availability of services for female as compared with male athletes and teams. Therefore, for each of the services outlined in Question 1, list the men's teams and the women's teams that receive each service or type of assistance. (See **Question 2.**) Examine for inequities the services that each sex receives. For example, is aid for injuries available to most male teams and for male athletic events but not for most female teams or female athletic events? Are specialists equally available to athletes of both sexes? Are the female and male teams equally likely to have medical assistance and supplies available at home games, away games, and practices? (You will later describe these inequities in Question 4.)

Next, look at who provides the services to see if there are qualitative differences between the sexes. (See **Question 3.**) Here you are asked to indicate who provides the services to men's teams and to women's teams. Possible responses are the school/college health service; the school nurse; the team trainer; a health professional (doctor, nurse, paramedic, emergency medical technician, etc.); the personal doctor of the student athletes; a coach or assistant coach; a physical education teacher; a volunteer; or someone else (specify who).

Question 3. Indicate who provides the service or assistance.
a. Men's teams.
b. Women's teams.

Look for significant differences between the services available to female and male teams. For example: If different persons provide services for the women's and the men's teams, are those persons equally qualified and certified? Does a doctor provide aid to injured male athletes, while a coach provides aid to injured female athletes? Are the services of a physician or of specialists equally available to athletes of both sexes?

Then, for each type of medical assistance and service, identify and describe any differences in the quality and the extent of the services available to women's and men's teams. (See **Question 4.**) Some of this information is best obtained through interviews and discussions with athletes, trainers, or coaches. Other information is more objective. Questions to answer include:

Question 4. Describe differences in the quality or extent of services available to women's and men's teams.

- *Are athletes of both sexes with similar injuries treated differently?* Are the procedures and criteria for receiving medical care the same for both sexes? Do females and males get the same services, with the same speed, and in the same amounts? Or are, for example, injured female athletes shipped off to the student health center to see a nurse, while injured male athletes are treated by a doctor or specialist?

- *Are the services provided not of the same quality for both sexes?* Does the school nurse do a cursory exam of female varsity players, while a team doctor does a complete physical examination of the male players? Do injured female players get a quick glance from the coach, while injured male players are scheduled for doctor appointments?

- *Are male and female athletes not equally satisfied, or dissatisfied, with these services?* What specific complaints do they have? Do female athletes believe that the medical personnel do not take their injuries seriously?

- *Are medical personnel not equally available for away games of female and male teams?* Do trainers routinely travel with all men's teams but with no women's teams?

- *Are there substantial budget differences for females and males?* For example, is the budget amount for males much larger than the amount for females? Does funding for services for female and male athletes come from different sources? Although Title IX does not require equal per capita expenditures in this or most other areas, a look at the budget can often help to pinpoint problem areas.

Note that all the italicized questions above are relevant to more than one type of assistance or service listed in Question 1. For example, the first item *(Are athletes of both sexes with similar injuries treated differently?)* is relevant to item c (aid for injuries), item d (availability of emergency ambulance services), item f (follow-up care for injuries), and item g (specialist care). Be sure to ask these questions for all

Question 5. List each sport by women's and men's teams.

Question 6. Who are the trainers?

a. Name and title of each trainer for each sport.
b. Salary of each trainer (per season, per sport, or per year).
c. Hours per week and weeks per year that trainer works with each team.
d. Qualifications and other information about trainers.

relevant areas and to record differences under Question 4 on the "Sports Medicine" chart in appendix B.

Overall, assess if there is a pattern of differences. If there are significant differences in the services provided, in who provides the services, or in the quality or extent of the services, there may well be a sex-equity problem.

Ask athletes and coaches about their perception of the relative availability of services for the men's and women's teams. Also, ask administrators and coaches if there are legitimate, nondiscriminatory reasons for any differences. For example, a high injury rate in one or two sports might "require" greater medical care. If, on the one hand, the lower injury rate for women's sports is caused by the fact that the school has kept the competitive level of women's sports lower than that of men's sports, then the school may not be meeting its obligation under Title IX not to discriminate in athletics on the basis of sex. If, on the other hand, the difference is because the particular women's sports generate fewer injuries, then this is probably not discrimination.

Availability and Qualifications of Athletic Trainers

Many high schools and colleges have trainers for their athletic teams. Often athletic trainers are included in a discussion of sports medical personnel since they can directly affect the health of student athletes. For example, they develop and supervise conditioning programs aimed at preventing injuries, and they provide treatment and rehabilitation services when an athlete is injured. The 1979 OCR Intercollegiate Athletics Policy Interpretation specifically mentions trainers.

Although coaches and assistant coaches are often responsible for training and on-the-spot health care, they frequently are not qualified to provide these services. With the dual job of coaching and training, they may do neither one well. Coaches face a conflict of interest if they must make, in the heat of competition, play-or-no-play decisions for injured athletes. However, using coaches rather than qualified trainers does not in itself constitute sex discrimination. If female teams found themselves without trainers comparable to those of their male counterparts, sex-discrimination issues could arise.

For example, at a major northwestern university, the Title IX evaluation noted inequities in training services. This report recommended the appointment of a full-time trainer for the women's program because "a trainer for the women's program will ease the current work load, be in the best interest of the female athletes, and help provide equity in work-related opportunities for female student trainers."

In looking at the issue of trainers, there is likely to be some overlap with the previous section ("Availability of Medical Personnel and Assistance"). This should not pose serious problems, however, in obtaining reasonably consistent and convincing information to assess patterns of equity—or inequity.

To discover patterns in the use of trainers, compare the services provided to men's and women's teams. The chart in appendix B can help with this task. You may need to get some of this information through conversations with coaches, trainers, and athletes. And even if you are not able to get all the information suggested, you should be able to have enough to get a fairly clear picture. Start with a simple listing of all sports and teams, divided into women's teams and men's teams. (See **Question 5.**)

Then look more closely at the trainers, who they are, and the services they provide to athletes. (See **Question 6.**) To answer this question, obtain as much of the following information as possible about each trainer for each sport—name and

title (**item a**); salary per season, per sport, or per year (this information may be difficult to obtain at private colleges) (**item b**); hours per week and weeks per year the trainer works with each team (**item c**); and qualifications and other information (**item d**). This other information could include the following:

- Is the trainer certified?
- Does the trainer have any special credentials or qualifications, or many years of experience?
- Is the trainer also a student?
- Does the trainer also serve other teams? If so, which teams?
- Does the trainer also have responsibilities for physical education classes or intramurals?

Be sure to record this information for both the men's and the women's teams.

To assess sex fairness regarding trainers, look at the data you have collected for Question 6 to answer the following questions:

- Are salaries for trainers of male and female teams comparable, given their experience and qualifications?
- Are trainers of female teams as likely as trainers of male teams to be available at games (both home and away), as well as during practices and at other times? (See also Question 7 to answer this question.)
- Are the trainers of female teams available to the same extent and for approximately the same amount of time as trainers for the male team? Or, for example, are they available for fewer hours, or also responsible for serving other teams of the physical education department?
- Are the trainers of female teams and male teams equally qualified? Are they equally likely to have special qualifications or be certified? (Or, for example, are 90 percent of trainers for male teams certified, compared with 10 percent of trainers for female teams?)
- Are trainers of female teams more likely to be students than trainers of male teams are? (For example, do uncertified student trainers provide services to female athletes, while paid training staff provide similar services to male athletes?)

If there are differences in trainers' characteristics that are not related to the services the teams need, sex discrimination is likely.

Next, look at the availability of trainers. Find out the average number of trainers available to each team during home games, away games, practices, and other times. (See **Question 7.**)

Then identify what services the trainers actually provide. (See **Question 8.**) Do they, for example, provide similar or equivalent services for female and male teams, including aid for injured athletes; taping assistance and services; assistance using

Question 7. What is the average number of trainers available to each team during home games, away games, practices, and other times?

Question 8. List the services trainers actually provide.

Question 9. List other information relevant to the quality of athletic trainers and the availability of their services.

the weight, training, or conditioning equipment; and other services (indicate what services)?

Finally, seek other information relevant to the quality of athletic trainers and the availability of their services. (See **Question 9.**) In gathering this information, look at areas where there might be differences between trainers of female and male teams. For example:

- *The quality of supervision.* Are trainers for male teams more likely to be supervised by a physician or other trained medical professional?
- *Criteria for assigning trainers to teams.* Are the criteria and standards for assigning trainers to female and male teams the same?
- *Special training and instruction.* Do trainers of female teams have the same access as trainers of male teams to special training and instruction?
- *The sex of the trainer.* Are most of the trainers male? Do they take the training concerns and needs of female athletes as seriously as they take the needs and concerns of male athletes?
- *Sharing of trainers.* Are trainers of female teams more likely than trainers of male teams to be shared with another team or the physical education department? This can mean that the services female student athletes receive are more limited or offered at more inconvenient times.

If you find a pattern of the men's teams having more trainers and more services, there is probably a sex-equity problem. Talk with administrators and coaches to learn if there is a nondiscriminatory reason for differences.

Availability and Quality of Weight, Training, and Conditioning Facilities

Weight, training, and conditioning equipment and facilities are a key part of a good athletic program. These facilities help athletes, male or female, avoid injuries in the first place, recover from them more quickly, and increase their athletic performance. Equipment and qualified staff to supervise its use are often not as readily available to female as male athletes—because the equipment is physically located in the men's gymnasium or men's locker room, because men's sports are given priority in scheduling, or because any separate equipment available to females is inferior or more limited. It is also common for women athletes to report harassment from the men using training facilities.

Examples of unfair policies and practices are not difficult to find:

- At an Ohio university, the only entrance to the high-quality conditioning equipment was through the men's faculty locker room and the men's swimming locker room. The facilities available to female athletes were less extensive, and the women, unlike the men, had to share them with physical education classes.
- At a northeastern university that had a Title IX complaint filed against it, the

women's basketball team shared weight and conditioning equipment with physical education classes, whereas the men's basketball team had exclusive use of equipment located in the basketball locker room. In addition, the women's training facility, located in the rest room of their locker room, contained very limited equipment that was shared with both the physical education program and visiting teams. The men, by contrast, had a separate and substantially larger training room located near (but not in) the men's locker room.

Question 10. List each major piece of equipment.
a. Available to men only.
b. Available to women only.
c. Available to both women and men.

In order to determine if weight, training, and conditioning facilities and equipment are equivalent, identify the range of equipment available to athletes. Start by identifying each major piece of equipment and noting its availability to men only, to women only, or to both sexes. (See **Question 10.**) Include such facilities as whirlpools, saunas, and weight-training equipment.

Question 11. Indicate where the equipment is located.

Then get some basic information about each piece of equipment. Take a tour and talk with coaches, trainers, administrators, and student athletes. As a first step, find out where the equipment is located. (See **Question 11.**) For example, in what building is it located? Is it actually located in the men's (or women's) locker room? (If so, are there any procedures or special arrangements for letting the other sex use it?) Is access to the equipment equally convenient and accessible for both sexes? Are females using the "men's" equipment harassed by the men?

Question 12. List the teams that use the equipment.

Next, examine how the equipment is actually used and who uses it. Begin by finding out which teams use the equipment. (See **Question 12.**) In noting this information on the chart in appendix B, indicate whether any teams are denied access or have only limited access. Note that the chart is designed so that equipment available to men's teams is listed first, equipment available to women's teams is listed second, and equipment available to both sexes is listed third.

Question 13. Give the days and hours when the equipment is available.

Next, for each team listed, note the days and hours when equipment is available. (See **Question 13.**) If possible, include schedules for the use of equipment. Indicate, for example, if members of some teams can use the equipment on a drop-in basis, while members of other teams must schedule use of the equipment well in advance. Are there obvious or subtle differences in scheduling in terms of the amount of time, convenience, and so on?

Question 14. Describe any sharing arrangements or priority use of the equipment.

Since equipment is often shared among several teams, it is necessary to look into sharing arrangements. Find out whether there are any sharing arrangements or priority use of the equipment. (See **Question 14.**) Using the chart, describe any procedures or criteria for determining who uses the equipment and who makes these decisions. Do these differ by sex? In addition, provide other information if it is relevant to the particular school being reviewed. For example:

- Do any teams have priority or exclusive use of the equipment? If so, describe how this priority works (which teams, when, how often, etc.).
- Is there any sharing arrangement with physical education classes, intramural teams, the general student body, and so on? How does this work? Who has first priority if there is a conflict?
- Are there any special restrictions or conditions on the use of the equipment? If so, describe these restrictions and indicate if they affect one sex more than the other.

Question 15. Provide other relevant information.

Evaluate the information to see if any of these arrangements fall unequally on one sex or the other or if there is a pattern of discrimination. For example, are female and male teams equally likely to double-up on equipment?

Finally, identify other relevant information to add to your assessment. (See **Question 15.**) This information could include, for example:

- *The quality of the equipment.* Is the equipment used by both sexes of about equal quality, age, and condition?

- *The appropriateness of the equipment* for either females or males. Is the equipment appropriately sized and adjustable to fit women? Are there relatively light, as well as heavier, weights available for women (many of whom, initially at least, may not be able to lift the heavier weights without hurting themselves)? Do the women get the men's hand-me-down equipment, even though it may not be appropriate to their sports or needs? If so, it is likely to be both of inferior quality (compared with that available to the male teams) and inappropriately sized.

* * *

Inequities in the health and medical services available to female and male athletes are commonplace and generally mirror inequities in athletic opportunities across the board. In addition to coverage of athletic accidents and injuries, three areas are important in assessing fairness regarding health services to athletes: (1) availability of medical personnel and assistance; (2) availability and qualifications of athletic trainers; and (3) availability and quality of weight, training, and conditioning facilities.

8

Alcohol- and Drug-Abuse Services and Programs

Seventh-grade teachers in the Sacramento, California, school system receive training on alcohol- and drug-abuse prevention. The leader of a 1981 training session commented that although girls used to abuse drugs and alcohol much less than boys, "they are now catching up."

Almost all (95 percent) of the students say they have consumed alcohol, 56 percent say they have tried marijuana, and 27 percent say they have tried cocaine.

—A 1987 survey of 600 Arizona State University students that looked at 17 drugs (including alcohol, nicotine, and diet pills), in Michael W. Hirschorn, "Alcohol Seen No. 1 Campus Abuse Problem," p. 32.

Three 16-year-old boys interviewed at a San Francisco high school in 1981 said that drugs were the in "thing" to do and that the main drugs students used were "pot and beer." The teenagers (one Black, one Hispanic, one Asian) commented that usage was a result of peer pressure, family problems, "problems with yourself," and "trying to be tough and macho."

Introduction

Substance abuse—abuse of alcohol and of legal or illegal drugs—affects virtually every child in elementary and secondary school and every young adult in postsecondary school, either directly or indirectly. Virtually everyone has had someone in his or her life who has a substance-abuse problem—a family member, a classmate, a neighbor, a friend, a co-worker. Sometimes the problems are relatively transitory and minor; often they are chronic and serious. Use of alcohol and drugs is linked to such destructive problems as violence, sexual assault, automobile accidents, drowning, and birth defects. Intravenous drug use is a major way in which the AIDS virus is spread.

Because of the widespread nature and seriousness of these problems, many schools and colleges have addressed these issues in one way or another—by providing information to students, by undertaking "responsible drinking" or "just say no" programs, by training peer counselors, by conducting special workshops and seminars, by providing direct services for students, or by referring students to

community services. Often a school-based effort follows a fatal automobile accident attributed to drunken driving, a suicide, or a drug problem with an athlete.

At the same time, few schools or colleges have given much consideration to the often different needs of female and male students. In considering sex differences in substance abuse, it is important to remember that while some differences are biological, many are caused by societal factors. Other supposed sex differences are the result of poorly constructed studies that reflect the biases of the researcher rather than actual sex differences. Further, *the sex differences cited are averages* and may not apply to any individual boy or girl. It is important to be wary of sweeping generalizations, especially when they are used to justify denying services to some students.

On average, there *are* sex differences in the extent and pattern of alcohol and drug abuse. The manifestations and implications of the problems may be different for males and females, and simply providing one service or another and saying that "anyone can use it" may not in fact fall equally on both sexes. Truly sex-fair services equally meet the needs of females and males, even if, in some cases, those needs are not identical.

- Treating females and males *alike* when in fact there are important average sex differences can have a discriminatory effect.

- Treating females and males *differently* when in fact they have similar problems and needs also misses the mark.

Alcohol abuse and alcoholism have traditionally been viewed as problems of men. Studies of adults show that men are eight to eleven times more likely to be arrested for drunkenness than women, and treatment facilities have historically been geared to meet the needs of men [PHS/HEW, 1980b, p. 3]. In addition, females and males who abuse alcohol frequently have different symptoms. For example, female alcoholics report depression more frequently and have higher suicide rates than male alcoholics do [PHS/HEW, 1980b, pp. 46, 92].

Male and female high school students and adults are about equally likely to consume alcohol, according to an extensive 1986 study. However, young men are more likely than young women to drink heavily, to drink frequently, and to drink beer. For example, 6.7 percent of males, but only 2.8 percent of females, reported daily use of alcohol in 1987 [Johnston, 1987, pp. 39, 73].

Similarly, average drug-abuse patterns differ by sex. For example, more high school males than females use illegal drugs. Boys are more likely to use drugs heavily and frequently and to take a greater variety of types of drugs [Johnston, 1985, pp. 35–47]. In contrast, girls and young women are more likely than their male counterparts to use stimulants—and to use them frequently. According to a large national report, 13.8 percent of all high school senior girls, but only 12.7 percent of boys, used stimulants in 1986. These higher figures for young women are largely due to using these drugs to lose weight ("diet pills") [Johnston, 1987, p. 37].

Title IX and Substance-Abuse Programs and Services

Title IX does not require a school or college to provide services for students, either male or female, who abuse alcohol or drugs. However, if a school does provide

services, they must be nondiscriminatory. In addition, section 504 of the 1973 Rehabilitation Act provides protection to both female and male students from discrimination on the basis of drug-related or alcohol-related handicaps. Other relevant federal provisions regarding alcohol and drug abuse and treatment of persons with problems in these areas are the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1976 and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970.

See appendix A for the actual wording of the Title IX regulation. The sweeping provisions in section 106.31 are especially relevant in the substance-abuse area.

Even if these laws did not exist, many schools and colleges would find it helpful to evaluate their substance-abuse services and programs to see if they meet the needs of female and male students equally.

Equity can take many forms, not all of which are desirable. For example, providing no services whatsoever, even when there are serious alcohol- and drug-abuse problems, does not constitute sex discrimination—but it does not make much sense from a health or educational point of view, either. On a more positive note, a school's or college's services and programs are probably sex fair if they reach approximately the same number of female and male students and concentrate on typically "female" drug problems (such as the use of stimulants and multiple-drug use), as well as typically "male" drug problems (such as violence and drunken driving).

Similarly, *inequitable* services and programs can also take a variety of forms. For example, services would not be sex fair if they were limited to one sex or the other (unless there is an affirmative action or other acceptable Title IX reason for this). An example would be an alcohol treatment program designated "for boys only" and located in the boys' dormitory. Girls as well as boys have alcohol-abuse problems.

At a more subtle level, the attitudes of school personnel or health care providers can perpetuate inequitable and unfair treatment—for example, a school administrator who winks at the behavior of a star football player who gets drunk frequently after games ("Boys will be boys!") but suspends the star of the women's basketball team for similar behavior ("A girl should be ashamed of herself!"). Ironically, the more tolerant treatment of the young man might well work to his detriment in the long run.

Another manifestation of unfair treatment would be if the therapy or services provided were far more appropriate to one sex than the other—for example, if all persons who counseled students with alcohol-abuse problems were female (or male) and had no experience or sensitivity in addressing problems or issues common to the other sex.

The key provision of Title IX prohibiting sex discrimination is so sweeping that it applies to the entire range of activities in covered institutions, even if the law or regulation does not specifically mention them. The Title IX regulation, for example, prohibits schools and colleges from doing the following on the basis of sex:

- providing different aid, benefits, or services (or providing them in a different manner)
- denying aid, benefits, or services
- subjecting persons to different rules or behavior or otherwise treating them differently

Question 1. Does the school provide any services or programs regarding alcohol or drug abuse?

a. If NO, describe any ways that the absence of services falls unequally on one sex or the other.

b. If YES, list and briefly describe each service and program.

- providing significant assistance to another person or organization that discriminates

- otherwise limiting any person in the "enjoyment of any right, privilege, advantage, or opportunity"

Further, schools and colleges covered by Title IX cannot deny a student admission to a course or program on the basis of sex. (In a very few instances, an institution might be able to justify a single-sex substance-abuse program on affirmative action grounds to overcome the effects of past discrimination.)

The Title IX regulation also requires that tests, appraisal, and counseling materials not perpetuate sex bias. The regulation says, for example, that institutions cannot use different materials for female and male students "which permit or require different treatment of students" on the basis of sex unless the same areas are covered and "the use of such different materials is shown to be essential to eliminate sex bias."

Although the regulation states that it does not prohibit a school from providing a service used more by one sex than the other, it is clear that this provision was intended to cover areas, such as family planning services, that are disproportionately used by females. If alcohol- and drug-abuse services are disproportionately used by one sex, questions of sex fairness certainly arise.

And, as mentioned previously, state and local laws do not change the school's obligation to comply with Title IX.

To evaluate equity in alcohol- and drug-abuse services and programs, look at three areas: (1) admission and accessibility to programs and services, (2) treatment of students in programs and services, and (3) the content of materials used in these programs.

Basic Information

For the questions discussed below, provide answers separately for alcohol- and drug–abuse programs, as shown on the chart in appendix B.

The first question to ask regarding alcohol and drug abuse is whether the school provides any services or programs addressing these problems. (See **Question 1.**) Even if the school does not, there could still be sex-equity problems if the absence of any services falls disproportionately on one sex or the other or if there is a pattern of providing services that are of more use to one sex than the other. Therefore, if the school has no such programs, find out whether the absence of services falls unequally on one sex or the other (**item a**). As a practical matter, while the absence of services may not make good programmatic or health sense, it is unlikely to be sex discriminatory.

If, however, the school does provide such services, list and describe each service or program, using the chart in appendix B (**item b**). Services could include, for example:

- a special alcohol (or drug) education curriculum

- special seminars, workshops, or programs in the dormitories or elsewhere regarding alcohol or drug abuse

- peer-counseling programs or tutoring for students who have fallen behind in their work because of substance-abuse problems
- training staff to assist in these areas
- Alcoholics Anonymous (or Alateen) meetings
- programs for parents
- efforts to identify and screen students with substance-abuse problems
- referrals to community health and social service agencies
- counseling services
- "responsible drinking" programs, aimed at helping students identify their drinking limits
- informational efforts, such as showing films, distributing materials on alcohol or drug use and abuse, displaying posters, or having a series of articles in the student newspaper
- an alcohol- or drug-abuse hot line
- values clarification activities, or training in responsible decision making or problem solving
- conducting a student survey on substance abuse
- information or booths on substance abuse in a health fair or health rally
- other services (describe what these other services are)

Question 2. Indicate the total number of students who annually use each service or program. Then indicate what percentage is female.

In providing this information, be as specific as possible. Indicate, for example, if the service or program is for alcohol abuse, drug abuse, or both, and what organization or department provides the service or program. Also, gather any schedules and descriptive materials about each program.

Admission and Accessibility to Programs and Services

To get a general idea of whether there are sex-equity problems, find out for each alcohol- and drug-abuse service how many students use each service annually and what percentage is female. (See **Question 2.**)

Using a commonsense approach, if the numbers of females and males for each service are roughly equal, there is probably not a problem with admission or accessibility to any given service or program. But, since there may be sex-equity problems with the treatment students receive once they are in the program, move ahead to Question 4 below.

If, however, the numbers are not roughly equal for each service and program,

Question 3. If the numbers are not approximately equal for females and males using each service or program, give the school's rationale or reasons for the disproportion.

there may well be a sex discrimination problem and it is necessary to look further. (See **Question 3.**) Here you are asked to identify the school's reason for the disproportion.

A possible response that would *not* constitute sex discrimination is that the program or service is one sex or disproportionately single sex because it is a part of a voluntary affirmative action effort undertaken by the school to overcome the effects of past discrimination or limited participation by one sex. For example, if it were clear that past efforts had excluded or overlooked females, a special program designed to remedy this problem could well be in order.

Theoretically, an institution could also cite the religious exemption or the "human sexuality" exemption. However, it is difficult to imagine a situation regarding alcohol and drug abuse in which these Title IX exemptions would apply.

Another possible response to Question 3 is that the service is aimed at problems that are more common in one sex than in the other and, for this reason, students (male or female) self-selected themselves into (or out of) the program disproportionately. Assuming that there is not a pattern of meeting the health concerns and needs of one sex to a greater extent than the other, a disproportion of one sex for this reason probably does not constitute sex discrimination under the Title IX standard.

Other responses, all of which would most likely constitute sex discrimination under the Title IX standard, are

- One sex or the other is simply excluded altogether—or the admissions standards or criteria are different for females and males.
- "We did all of our recruiting in the boys' dorms," or "We thought it would be more effective to hold programs only in the boys' dorms."
- "Girls don't have alcohol- or drug-abuse problems."
- "The teacher wanted it that way."
- "We have always done it this way."

Pay special attention to any areas where there is a great male-female disproportion. Try to determine *why* the disproportion exists. If the problem is that *outreach efforts* are inadequate to reach women, then at least part of the solution is to expand these efforts by, for example, working with the women's center or with clubs that have many women members. Another outreach method is to put materials or posters in the bathrooms, the women's locker room, or dormitories. If materials show pictures only of white men, then supplementary materials are needed to show minority men and women, as well as white women. If the attitudes of teachers or administrators are the problem, then some in-service training or informal discussions may be needed.

Treatment of Students in Programs and Services

There may also be discrimination in the way that students are actually treated in programs, even if admissions are not sex discriminatory. To determine if there is sex discrimination against students, find out, for each service and program listed,

whether any different or discriminatory treatment of females and males exists, including treatment that has a disproportionate effect on one sex. (See **Question 4.**) Possible findings are that (a) the costs to students are different for males and females; (b) the services are more conveniently located for males (or females), for example, in a single-sex dormitory or on campus for one sex and off campus for the other; (c) females or males are denied access to services at certain hours when the other sex has access to services; (d) different diagnostic or other tests are used for females and males; and (e) emergency treatment is more available to one sex than the other.

Question 4. Describe any different or discriminatory treatment of or services available to females and males, or treatment that has a disproportionate impact on one sex or the other.

In addition, some differences are more subtle and relate to the sex of the provider or the provider's attitudes about females and males. For example:

Question 5. Give the school's rationale or reasons for this different or discriminatory treatment.

- The services for males and females are provided by different people or people with unequal qualifications or ability.
- The availability of special services is different for females and males—for example, counselors are available for one sex but not for the other.
- Referrals to or the availability of specialists are unequal (this can have cost implications as well).
- Health care providers sexually harass female clients.
- Health care providers or counselors make demeaning comments to female students (if both sexes are equally subject to this, it is bad and unethical health care, but it is probably not sex discrimination).
- There are no female (or male) health care providers, or providers are not equally qualified to deal with the problems and issues affecting both sexes.

Question 6. Describe any other equity or discrimination problems.

Using the examples above as guideposts for each service, obtain specific information about differences for females and males. Using the chart in appendix B, indicate what the differences are and how great any disparities are.

If there is any different or discriminatory treatment, identify the school's reasons for such disparities. (See **Question 5.**) Refer back to Question 3 for a discussion of possible reasons.

Next, identify any other equity or discrimination problems. (See **Question 6.**)

One example of this would be a policy or practice of reporting offenses by one sex, but not the other, to the police. An interesting variation of this problem was reported by staff at a school in Chicago: girls were generally not arrested because "the situation in the jails is so poor for them." It was not clear whether the situation in the jails was any better for boys—or whether staff were using a double standard to judge the conditions in jail.

Other possible equity problems in these programs include services that are not available to disabled students; services that do not take into consideration important differences for cultural, racial, or ethnic groups, with the result that the students do not use the services; and, for language-minority students, lack of access to services because of language barriers.

Also, indicate on Question 6 in the chart who established any policies that pose equity problems.

Question 7. List any materials used by alcohol- and drug-abuse programs and services.

Question 8. Describe any biases, stereotypes, or omissions.

Materials Used in Programs and Services

While Title IX neither requires nor prohibits the use of any particular print or audiovisual materials, a review of the materials used might well provide insight into problem areas. These materials can be used for counseling, for appraisal, or to provide information. Title IX *does* prohibit the use of appraisal and counseling materials that are sex-discriminatory. With this in mind, collect and list on the chart any materials used by alcohol- and drug-abuse programs and services. (See **Question 7.**)

Then, review the materials to note any biases, stereotypes, or omissions. (See **Question 8.**) Keep the following questions in mind when reviewing biases, stereotypes, and omissions in the school's materials:

- Are the materials designed to appeal only to males (or only to females)? Or are there unbiased references to and pictures of both sexes?
- Do the materials equally address problems faced by both sexes?
- Is any research cited in the materials in fact based on *studies of males only*, but described as if it applied to females as well? (This is not uncommon, especially when there are significant sex differences.) Similarly, is any research of women or girls described as if it applied to men and boys as well?
- Are there stereotypes based on sex, race, national origin, disability, or sexual preference?

* * *

Increasingly, elementary and secondary schools, as well as colleges and universities, are addressing the many problems caused by student alcohol and drug abuse. Actual average sex differences in abuse problems, as well as stereotypes about female and male abusers, may lead to programs or services that are not equally appropriate for both sexes. Three major areas to assess in judging sex fairness in these programs are (1) admission and accessibility to programs and services, (2) treatment of students in programs and services, and (3) materials used by the programs and services.

9

Mental Health Services

Clinicians were asked to define behavior that represented a "healthy male," a "healthy female," and a "healthy adult." The therapists generally agreed that a "healthy male" and a "healthy adult" had the same characteristics. But a "healthy woman" was seen as more submissive, less independent, less adventurous, more easily influenced, less aggressive, less competitive, more excitable, more easily hurt, more emotional, more conceited about her appearance, less objective, and less interested in math and science than either a "healthy man" or a "healthy adult." Perhaps surprisingly, the evaluations of the male and female clinicians were the same: females were as likely as males to have a stereotyped definition of a "healthy female."

—Results of a now-famous 1960s study (the Broverman study) of the degree to which mental health professionals believed in and perpetuated double standards in mental health, Phyllis Chesler, *Women and Madness*, pp. 67–69

These attitudes about what is right for girls and what is right for boys persist today among many mental health professionals, including those who work with children and adolescents. For example, the first chapter of a massive 1986 book on adolescent psychiatry is written by a University of Kansas medical school professor and clinician. He begins a short section on "feminism" by saying: "Related to the so-called sexual revolution of the 1960s and 1970s was the emergence of what came to be known as the feminist or women's movement." He goes on to lambast "so-called unisex teachers [who] *attempted to jettison the traditional gender-related approach to boys and girls in order to preclude the younger students' acquisition of what teachers regarded as sexist attitudes and to minimize gender-related differences." Displaying attitudes remarkably reminiscent of those documented twenty years earlier in the Broverman study, the author continues: "This approach generally took the form of pushing girls into male attitudes and activities while often not unsubtly denigrating the latter in an attempt to effeminize boys." He continues by berating the "increasing numbers of single and married women entering the full-time workforce, competing with men as breadwinners* [Feinstein, 1986, pp. 15–16]*." Although many female mental health professionals work with children and adolescents, women were noticeably absent from extensive compilation: all six of the editors were men, as*

were all eleven consulting editors, ten of the eleven members of the editorial board, and 80 percent of the authors of the thirty individual chapters.

The building administrator at an Ohio junior high school insisted that the female counselor work only with girls and that the male counselor work only with boys. In response to a question from the male counselor, who disagreed with the policy, the regional Office for Civil Rights said that this sex segregation was indeed prohibited by Title IX.

The instruments or materials used in clinical or counseling situations can also perpetuate stereotypes about women and men. For example, in 1972, around the time Title IX became law, the American Personnel and Guidance Association passed a resolution calling for the revision of the then-widely used Strong Vocational Interest Blank because it encouraged discrimination against females. The pink version of the form, for girls, listed such occupations as social worker, science teacher, and nurse; the blue version, for boys, contained such occupations as psychologist, scientist, and physician. One question on the inventory was: "Do you like stag parties?" In a 1981 ruling, the Department of Education's Office for Civil Rights found an Iowa school district guilty of sex discrimination because it used the Kuder General Interest Survey, which has separate scoring for males and females.

—National Advisory Council on Women's Educational Programs, *Title IX: The Half Full, Half Empty Glass*, p. 19

Introduction

The mental health problems of children, teens, and young adults are often treated casually—as passing phases—by parents, peers, and teachers alike. In fact, however, many young people have substantial mental health problems that would benefit from care or therapy—problems that can and often do become long-term concerns if treatment is delayed.

While good arguments can be made for increasing the mental health services to children and adolescents, few elementary and secondary schools in fact provide comprehensive mental health services. Many colleges, however, do offer extensive counseling and mental health services. Because of this, the most obvious sex-equity concerns in this area appear at the college level. At the same time, subtle and not-so-subtle differences in treatment of boys and girls can appear equally at the lower levels—for example, counselors interrupting girls more often than boys or making stereotyped judgments about behavior.

No one knows the exact number of children and youth who have mental health problems needing treatment. Generally, however, studies have shown that 2 to 3 percent of children and youth suffer severe disorders that require psychiatric care [PHS/HHS, 1981b, p. 300]. Estimates of mental health problems range from 7 to 30 percent of all young people [PHS/HHS, 1981g, p. 19; Feinstein, 1986, pp. 121–24].

Although both the letter and the spirit of Title IX prohibit sex discrimination in mental health services and counseling, any concerns about equity in this area must

also be addressed in light of federal, state, and local laws regarding discrimination against the mentally and physically handicapped. For example, section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in programs receiving federal financial assistance, and the Education for All Handicapped Children Act, or Public Law 94-142, ensures a free, appropriate education to all children requiring special education and related services. The federal laws regarding the handicapped contain important provisions, especially requirements for procedural safeguards, that are likely to provide a more efficient remedy than Title IX in situations to which they apply, even when a significant part of the discrimination is based on sex or race.

In the area of mental health, a good argument can be made that sex discrimination can go both ways. Sex-role stereotypes and discrimination affect both males and females negatively. On the one hand, many problems of females are either dismissed as nonsense or *over*treated. On the other hand, males (especially minority males) have often been diagnosed or labeled as having serious mental or emotional problems when their female or white counterparts with equally serious problems have not been so diagnosed. Additionally, males are typically more hesitant to seek mental health services, even when they very much need them.

Few people would deny that the mental health needs and concerns of women and men, and girls and boys, sometimes differ dramatically from one another. And equally few people would agree on exactly what all of those differences are and how a mental health provider should appropriately respond to them. Commonly recognized sex differences include higher rates of depression and serious eating disorders in females and higher rates of suicide and commitment to mental institutions for males.

Title IX and Mental Health Services

Application of Title IX in the area of mental health services can be fairly complex because in many instances, especially at the elementary and secondary levels, there are overlapping legal protections of students with severe mental health problems. Students with serious mental or emotional problems may be covered by section 504 of the Rehabilitation Act of 1973, and students at the elementary and secondary levels may be covered by the Education for All Handicapped Children Act. There is also a fairly extensive body of law regarding referral and commitment of both children and adults to mental institutions. Finally, the disproportionate referral of young minority males to mental institutions raises the issue of racial discrimination, which is prohibited by Title VI of the 1964 Civil Rights Act.

Sex discrimination in mental health services is typically difficult to prove, unless the discriminatory behavior or its effects are blatant—for example, rape of a female client by a male therapist or long-term sexual harassment. Many of the clinical judgments that mental health providers make are, by their very nature, subjective and confidential. Mental health clients and patients are an especially vulnerable and often isolated population. The provision of services is often one-on-one. At the same time, one does not necessarily need ironclad legal proof to point out to a mental health professional that his or her behavior is biased, is inappropriate, and may in fact be doing the client more harm than good. Often this revelation alone will prompt a counselor or therapist to change his or her behavior.

While Title IX does not require that a school or college provide any mental health services, it does prohibit sex discrimination against students in any guidance and counseling services offered. Because this book is concerned with health

Question 1. Does the school provide any mental health services?

a. If NO, describe any ways that the absence of services falls unequally on one sex or the other.
b. If YES, list and describe each service: services aimed at the general student body; services aimed at, or disproportionately used by, females; and services aimed at males.

services, this discussion focuses on mental health and counseling services that a school or college might offer, and not on career and course advising (even though discrimination in these areas is also prohibited by Title IX). Relevant provisions of the Title IX regulation can be found in appendix A.

The general provisions in the regulation prohibiting sex-discriminatory aid, benefits, services, or treatment apply to mental health and counseling. In addition, the regulation specifically forbids discrimination "against any person on the basis of sex in the counseling or guidance of students or applicants for admission." This general prohibition against counseling discrimination was added to the regulation in response to public comments. Earlier versions of the regulation prohibited sex bias in counseling and appraisal materials but not in counseling itself [OCR/HEW, 1975, p. 24133].

The Title IX regulation generally prohibits the use of sex-biased counseling materials, or materials that are different for males and females. The exception to this is if "the use of such different materials is shown to be essential to eliminate sex bias." Schools must develop and use internal procedures for ensuring that these materials do not discriminate on the basis of sex. If a class has a disproportionate number of students of one sex, the school must "take such action as is necessary to assure itself" that the disproportion is not the result of sex discrimination in counseling. (This problem is most likely to occur regarding vocational or career counseling, which is not the focus of this chapter.)

Finally, the regulation also requires that institutions that find a disproportionate number of students of one sex in a class take steps to ensure that this is not the result of sex discrimination by counselors or in appraisal materials. While this problem is most likely to arise in the context of counseling students into (or out of) specific vocational areas, it could also apply to the assignment of students to special classes or programs for the emotionally disturbed.

At the same time, the fact that either females or males actually use a service (such as the mental health services or birth control or pregnancy counseling) more frequently does not automatically make that service discriminatory or in violation of Title IX. Since females are generally less reluctant than males to use mental health services, however, outreach efforts to encourage use by men might be in order.

To identify sex bias and discrimination in mental health services, examine three areas: (1) admission and accessibility to programs and services, (2) treatment of students in programs and services, and (3) counseling and appraisal materials.

Basic Information

The chart entitled "Mental Health Services" in appendix B will assist in gathering the relevant information.

Start by getting the most basic information: whether or not the school provides any mental health services. (See **Question 1.**)

Even if no services are provided, determine whether this omission falls unequally on one sex or the other, and if so, how (**item a**). Most likely, the absence of services either directly or by referral is not sex discriminatory, although it may in some cases constitute discrimination on the basis of handicap.

If, however, services are provided, use the chart to list and briefly describe each service (**item b**). First, list services or programs aimed at all students in the *general student body*. Second, list services and programs aimed at, or disproportionately used by, *females*. Finally, list those aimed at *males*. Be fairly specific in listing each aspect.

Mental health and counseling services *aimed at the general student body* could include, for example:

- general diagnostic or referral services (including what kinds of diagnoses are made or to what organizations or people students are referred)
- psychotherapy
- drop-in counseling services
- counseling or information regarding alcohol or drug abuse
- workshops on stress reduction
- couples or relationship counseling
- sexuality counseling (for heterosexual, homosexual, lesbian, and bisexual students)
- counseling regarding AIDS and other sexually transmitted diseases
- emergency/crisis counseling
- mental health education information, such as listings of local resources or tips on how to reduce stress

Mental health and counseling services aimed at, or disproportionately used by, *females,* might be the following:

- assistance for students with eating disorders
- assertiveness training
- information or services regarding sexual harassment
- services for victims of rape, domestic violence, or sexual abuse
- services or counseling regarding child abuse or incest
- reproductive counseling, including pregnancy, problem pregnancy, abortion, birth control, premenstrual tension, and dysmenorrhea
- women and AIDS
- mental health information aimed at women

Note that many of these services may be equally appropriate for men, even though men may not use them or the services may not be geared to men.

Finally, mental health and counseling services aimed at *males* might include seminars or information on male sexuality, male-centered birth control counseling, men and AIDS, and counseling on male sexual dysfunction.

Question 2. Indicate the total number of students who annually use each service. Then indicate what percentage is female.

Question 3. If the numbers are not approximately equal for females and males for each service, give the school's rationale or reasons for the disproportion.

Question 4. Describe any different or discriminatory treatment of or services available to females and males, including treatment that has a disproportionate impact on one sex or the other.

Admission and Accessibility to Programs and Services

To identify any possible sex-equity problems, ascertain how many students use each service annually and what percentage is female. (See **Question 2.**) There are likely to be significant differences between male and female usage patterns in some of these areas. Some services, such as pregnancy counseling or information on male sexual dysfunction, may be more suitable for one sex or the other. In addition, females are generally less hesitant than males to use available mental health services.

For those areas where the numbers are not roughly equal, look further to determine if there is a sex-equity problem. Start by determining the school's rationale or reasons for the disproportion. (See **Question 3.**)

Legitimate, nondiscriminatory reasons for a disproportion under Title IX include affirmative action to overcome past discrimination, the religious exemption, and the "human sexuality" exemption at the elementary-secondary level. (Each of these exemptions is specific and limited, not a blanket exemption.) Also, there is probably not a Title IX problem if the proportion of female and male students reflects the makeup of the student body.

Another reason for a disproportion might be "More females just signed up for it" or "The guys weren't interested." While disproportionate use in itself does not necessarily constitute sex discrimination, it does point to the need to assess the services to see if outreach efforts to the other sex are needed. For example, if most of the relationship-counseling services are being used by females and the males on campus are not using these services, outreach efforts to male students might be appropriate. As noted earlier, the University of Massachusetts at Amherst had a special program, Men's Awareness of Sexual Health (MASH), which included outreach and counseling for men.

Treatment of Students in Programs and Services

As is true in other areas, Title IX prohibits different standards or criteria for providing services on the basis of sex. There may be sex-discriminatory treatment of students in services, even if their access to services is equal. Therefore identify any different or discriminatory treatment of or services available to females and males, including treatment that has a disproportionate impact on one sex or the other. (See **Question 4.**)

Possible sex-discriminatory findings are as follows:

- Charges for services are greater for females (or males).
- Services used primarily or exclusively by females are provided at less convenient times than other services.
- Only males counsel males, and only females counsel females.
- The attitude and behavior of the therapist(s) or counselor(s) make victims of rape, sexual abuse, sexual harassment, or domestic violence feel as if it were "their fault."

- Counselors of both sexes are not available to both sexes. (This is especially important to young people as they are growing up; the availability of a counselor of the same sex who serves as a role model is especially critical, and some students will not discuss sexuality related issues with the opposite sex.)
- The services are more convenient for one sex than the other.
- Diagnoses are made on a different and inappropriate basis for females and males, or recommended actions are inappropriately different.
- Referrals to specialists are unequal.
- Female or male clients are sexually harassed.
- Female or male clients are subjected to biased or stereotyped comments about their problems.
- Emergency treatment is more available to one sex than the other.

For each service, include on the chart specific information about any differences for females and males and indicate how substantial any disparities are.

If there is any different or discriminatory treatment, determine the school's rationale or reasons for such treatment. (See **Question 5.**) Refer to Question 3 for some possible answers.

Next, find out whether there are any other equity or discrimination problems. (See **Question 6.**) These problems could include inaccessibility of services to disabled students, lack of availability of services to language-minority students because of language barriers, and policies of not treating certain problems more common to one sex than the other. Using the chart, indicate who is responsible for establishing any policy, who provides the service, and so forth.

Question 5. Give the school's rationale or reasons for this different or discriminatory treatment.

Question 6. Describe any other equity or discrimination problems.

Question 7. List any counseling or appraisal materials used by the school.

Question 8. Describe any discrimination, biases, or stereotypes.

Counseling and Appraisal Materials

The Title IX regulation specifically prohibits discriminatory counseling or appraisal materials. Therefore, collect and list on the chart any counseling or appraisal materials used by the school. (See **Question 7.**) These items could include such things as tests used and written materials.

Finally, review the materials and identify any discrimination, biases, or stereotypes in them. (See **Question 8.**) For example:

- Are separate forms used for females and males?
- Are the rating or grading standards different for females and males?
- Are there clearly sex-biased questions?
- Are different approaches, strategies, or treatments recommended for females and males? (If so, are options more limited for one sex than the other?)

- Are there stereotypes or sex-biased value judgments implicit in the materials?

Using different materials for boys and girls is permissible under Title IX in a few limited instances—specifically, when they are essential to eliminating sex bias. Also, Title IX requires schools to develop and adopt internal procedures for ensuring that materials are not sex discriminatory.

* * *

Mental health providers in schools and colleges are faced with the challenge of providing services that are unbiased and not sex discriminatory while simultaneously being sensitive to genuine average sex differences and recognizing the different pressures that often affect females and males. In evaluating these services for fairness, one should examine (1) admission and accessibility to programs and services, (2) treatment of students in programs and services, and (3) counseling and appraisal materials.

10

Other Health Services and Programs

The University of Rhode Island threatened to expel thirty freshmen women who did not comply with a state requirement that all women (but not men) between the ages of fifteen and thirty-five enrolled in a college or university show evidence of immunity to rubella (German measles). After a protest from the American Civil Liberties Union claiming that this female-only requirement was a sex-discriminatory violation of Title IX, the university backed down.

—Association of American Colleges, "Immunization in Rhode Island: Violating Title IX?" p. 5

Although estimates vary dramatically, girls are reported as having been sexually abused at a much higher rate than boys: estimates range from twice to ten times as often.

—A. Nicholas Groth and H. Jean Birnbaum, "Adult Sexual Orientation and Attraction to Underage Persons," pp. 178–79

At the same time, sexual abuse of boys is underreported. In either event, whether the victim of abuse is female or male, the abuser is almost always male.

—Alexander G. Zaphiris, "The Sexually Abused Boy," p. 1

Boys are more likely than girls to be victims of molestation that involves physical touch. Sixty-three percent of "hands-on" molestation is committed against boys. "Hands-off" molestation, such as exhibitionism and voyeurism, is committed against girls 99 percent of the time.

—Gene G. Abel, *The Evaluation of Child Molesters*, p. 1

Most of the reported cases of incest are father-daughter incest, and 92 percent of these cases are in intact, nuclear families.

—Valerie Julian, Cynthia Mohr, and Jane Lapp, "Father-Daughter Incest," pp. 18, 20

There are sex differences even in such an apparently neutral area as dental care and oral health. For example, studies have shown that

females have a slightly higher number of cavities than males. And females are twice as likely to have canker sores as males.
—U.S. Department of Health, Education, and Welfare, *Tetracycline Stained Teeth;* U.S. Department of Health and Human Services, *Fever Blisters and Canker Sores*

Introduction

Many schools and colleges provide a variety of health services and programs in addition to those already discussed. For example, elementary and secondary schools frequently provide immunization and screening services, and colleges may provide comprehensive health services, including inpatient or hospital care. Services commonly provided by schools or colleges include

- dental screening and services
- immunization and screening services and requirements
- health or support services for victims of incest and child abuse
- nutrition and weight-control services and programs
- environmental and occupational health and safety services
- other health care and services (including inpatient, infirmary, and outpatient care; emergency services and first aid; clinics and services for allergies and skin conditions; diagnostic and prevention services; and pharmacy services)

There is the potential for discrimination or inequitable services in each of these areas—by treating females and males alike when they have different needs, by treating them differently when they in fact have the same needs, and by providing a pattern of services that more fully meets the needs of one sex than the other.

Title IX and Other Health Services and Programs

The discussion of Title IX coverage in chapter 8 also applies to the other health services and programs described in this section. Also see appendix A for the actual wording of relevant sections of the Title IX regulation. The areas to evaluate for equity are (1) admission and accessibility to programs and services, (2) treatment of students in programs and services, and (3) materials used in programs and services.

To evaluate sex fairness in these "other" services, seek answers to the questions discussed below for each of the following types of services:

- dental screening and services
- immunization and screening services and requirements

- services for victims of incest and child abuse
- nutrition and weight-control services
- environmental and occupational health and safety services
- other care and services

Basic Information

The charts entitled "Other Health Services and Programs" in appendix B will assist in gathering the relevant information.

The first question to ask is whether the school provides any services or programs in each of the areas listed. (See **Question 1.**)

Even if the answer to this question is NO, there could still be equity problems if the absence of any services falls disproportionately on one sex or the other. Therefore, if the answer is NO, determine whether, and if so, how, the absence of services falls unequally on one sex or the other (**item a**). The likelihood that not providing any services at all would have a sex-discriminatory effect varies according to the issue. Although there are some sex differences in all of these areas, not providing services would not be judged discriminatory unless the effect fell unequally on girls and boys, women and men.

If the answer to the first question is YES, use the chart in appendix B to list and briefly describe each service and program for the different areas (**item b**). Possible answers for each category are as follows:

- *Dental screening and services:* screening programs; provision of services (either alone or in conjunction with a local health agency), such as teeth cleaning, extractions, and fillings; referrals to local health agencies or dentists; referrals to orthodontists; instruction in dental and oral hygiene (e.g., brushing and flossing); and other health education efforts
- *Immunization and screening services and requirements:* immunization requirements; screening for scoliosis; screening for sex-linked genetic diseases and conditions; screening for other conditions (such as lead poisoning, vision and hearing problems, and sickle-cell anemia); and health education information
- *Services for victims of incest and child abuse:* emergency care, reporting, referrals to health and social service agencies, and so on
- *Nutrition and weight-control services:* weight-control or reduction clinics, seminars, or programs; medically supervised diet programs; nutritional advice or supervision for pregnant students; health education information about diet and nutrition; and so on
- *Environmental and occupational health and safety services* provided by the health center: screening of students/workers; inspection of specific sites (such as vocational education classes, shops, and science labs); laboratory testing and diagnosis; rehabilitative services; education efforts; and so on

Question 1. Does the school provide any services or programs in each area—dental screening and services, immunization and screening services and requirements, services for victims of incest and child abuse, nutrition and weight-control services, environmental and occupational health and safety, and other care and services?

a. If NO, describe any ways that the absence of services falls unequally on one sex or the other.
b. If YES, list and briefly describe each service and program for each area.

Question 2. Indicate the total number of students who annually use each service. Then indicate what percentage is female.

Question 3. If the numbers are not approximately equal for females and males for each service or program, give the school's rationale or reasons for the disproportion.

- *Other care and services. Inpatient care and services:* room and board, on-site medical services and tests, and so on. *Emergency services and first aid:* providing and dispensing first aid, emergency treatment for drug or alcohol abuse or accidents, transportation to a hospital, referral to more complete health facilities, and so on. *Clinics and services for allergies and skin conditions:* providing treatments, medications, or injections; advice or health education regarding hygiene or diet; and so on. *Diagnostic and prevention services:* blood and other laboratory tests, X-rays, sonograms, and so on. *Pharmacy services:* prescription and nonprescription medications and aids.

Now that you have identified each service, move ahead to get more information about who uses these services.

Admission and Accessibility to Programs and Services

Find out the extent to which students use each service. Determine how many students use each service annually and what percentage is female. (See **Question 2.**)

As was the case with alcohol-abuse, drug-abuse, and mental health services, if the proportion of females and males who use each specific service is approximately equal, there is probably not a problem with admission or accessibility to a service.

If, however, the proportion of females and males who use each service is not approximately equal, you need to look further to see if there is a sex-equity problem regarding access. Start by learning the school's reasons for the disproportion. (See **Question 3.**)

As in other areas, it would not violate Title IX if the program were disproportionately used by one sex if this reflected student enrollment or were part of a voluntary and temporary affirmative action effort by the school to overcome the effects of past discrimination.

With the exception of the fairly remote possibility of the areas of *incest and child abuse*, it is unlikely that either the religious exemption or the "human sexuality" exemptions under Title IX would apply to services regarding these "other health services."

It would most likely be considered sex discriminatory if, for example, services were limited to one sex because "We didn't have enough resources to serve both boys and girls." If there are limited resources, distinctions can be made on other bases (such as screening only one grade), but they cannot generally be made on the basis of sex.

Following is a short discussion of some reasons that might be given for disproportionate use of services by one sex or other.

- *Dental screening and services.* There is not likely to be a disproportionate use of these services by one sex or the other.

- *Immunization and screening services and requirements.* Because of the potential danger to a developing fetus of giving "live" vaccine (such as that for rubella) to a pregnant female, many states exempt adolescent and adult females from some immunizations. Because this is sound medical practice, intended to protect the health of the fetus, and because this exclusion has no discriminatory effect, it is extremely doubtful that this practice would be defined as

discriminatory against either females or males. Other practices, such as screening only girls for scoliosis and only boys for color blindness (since problems are more common in one sex than the other), would probably not be acceptable, however, under Title IX. The problems are not *exclusive* problems of one sex or the other. And, as a practical matter, this type of screening is simple and inexpensive.

- *Services for victims of incest and child abuse.* See the discussion of this issue above. Also, if there is underreporting of this problem for males, additional outreach or identification efforts might be desirable.

- *Nutrition and weight-control services.* These services might be disproportionately female because, on average, women are somewhat more likely to worry about their weight, and to be concerned about nutrition and food preparation. If this is a function of self-selection, it is not necessarily discriminatory under Title IX. Underrepresentation of men in these programs, however, should be assessed to determine if additional outreach efforts are needed to inform them of these programs. Also, if a weight-reduction program had a double standard for females and males and encouraged sex stereotypes, Title IX questions would arise.

- *Environmental and occupational health and safety services.* If members of one sex received these services disproportionately because their placements were in fact more hazardous, then there might well be a discrimination problem in the *placement* process. If one sex benefited from these services disproportionately because of limited access of the other sex to services, or lack of outreach, then steps by the school to remedy this would be in order.

- *Other care and services.* A generally unacceptable reason that might be given for unequal *inpatient or infirmary care* is that "We ran out of beds in the girls' (or boys') side or wing" or "We don't have two bathrooms." While this may at first sound plausible, it is a relatively easy matter in most cases tc make minor rearrangements to ensure a patient's privacy. Similarly, a bathroom can be provided by putting a simple sign on the door ("Occupied/Not Occupied") and using the facilities serially, much as is done on airplanes. Denying females with serious and painful dysmenorrhea admission while admitting other equally ill students would most likely be judged discriminatory. If *emergency services and first aid* were used disproportionately by males because, in fact, their accident rate was higher, this would be unlikely to trigger a finding of discrimination under Title IX. (It might, however, appropriately trigger investigation of effective ways to reduce the accident rate.) It would not be discriminatory under Title IX if the *pharmacy services* were disproportionately used by females if the reason were family planning and birth control. (The Title IX regulation specifically says that a "disproportion" in this area does not constitute sex discrimination.)

Treatment of Students in Programs and Services

Whether or not access or admission to programs or services is equal, there could be discrimination *in the services themselves.* Therefore, use the chart in appendix B

Question 4. Describe any different or discriminatory treatment of or services available to females and males, including treatment that has a disproportionate impact on one sex or the other.

to delineate any different or discriminatory treatment of or services to females and males, including treatment that has a disproportionate impact on one sex or the other. (See **Question 4.**) Possible ways in which the treatment could be discriminatory are as follows:

- cost (for example, if student health insurance or the school budget covers expenses for one sex, but not the other, or if the cost of birth-control pills is not discounted, while other prescription costs are)
- different (sex-based) standards or criteria for making services available
- convenience (for example, if the services are more conveniently located or the hours of availability are convenient for one sex but not the other)
- any special services available that are not equally appropriate to both sexes
- referrals that are not made on the same basis for both sexes
- biased behavior by health care providers (for example, moralizing comments, or less thorough care for or sexual harassment of one sex)
- differences in available tests, diagnostic services, and so on
- health care providers who are not equally able or qualified to meet any sex-specific concerns or problems

Describe the nature and magnitude of any differences specifically for each area outlined in Question 4.

- *Dental screening and services.* It would be discriminatory, for example, to refer girls more readily to orthodontists because "It's more important for girls to have a pretty smile." (Since the alignment of the teeth can affect a person's general health and ability to chew and digest food, as well as affect his or her appearance, this is not only a cosmetic issue.)
- *Immunization and screening services and requirements.* It is difficult to imagine an instance where differential treatment by sex would be either desirable from a medical point of view or allowable under Title IX (with the exception of exempting females who might be pregnant from some immunization requirements, as described above).
- *Services for victims of incest and child abuse.* If the problem were treated more seriously by health personnel for one sex or the other, this treatment should be changed. These health problems are serious for victims of both sexes, even when the manifestations or types of abuse differ. While only females can become pregnant, both sexes can be traumatized, physically harmed, or infected with the AIDS virus or other sexually transmitted diseases.
- *Nutrition and weight-control services.* Allowable differences in treatment might include such areas as providing nutritional advice regarding pregnancy or providing supplementary information where there are significant average

sex differences (for example, the greater need of women for iron or calcium supplements).

- *Environmental and occupational health and safety services and other care services.* Refer to the discussion of this under Question 3.

If there is any different or discriminatory treatment, determine the school's reasons for such treatment. (See **Question 5.**) Refer back to Question 3 for a discussion of possible reasons.

Next, you will need to identify any other equity or discriminatory policies and practices. (See **Question 6.**) Using the chart, list and describe other sex-specific policies or practices, as well as any lack of availability of services for disabled students or any discrimination on the basis of race, national origin, or language. Indicate who established the policy or practice. For example, in the area of nutrition and weight-control services, one parent reported that at her child's grade school, second helpings on food were offered to boys but not girls.

Question 5. Give the school's rationale or reasons for this different or discriminatory treatment.

Question 6. Describe any other equity problems or discriminatory policies or practices.

Question 7. List any materials used with these programs and services.

Question 8. Describe any biases, stereotypes, omissions, or discrimination.

Materials Used in Programs and Services

At the risk of being redundant, it is worth repeating that Title IX neither prohibits nor requires the use of any curricula or other materials. At the same time, a review of materials can provide insight into problem areas that Title IX does cover—and schools may want to ensure that materials portray males and females equitably, even without a federal mandate. And once these problem areas are identified, many institutions will wish to modify either the materials or how they use them so that they do not perpetuate stereotypes.

With this in mind, collect any materials used with these programs and services, and list them on the chart. (See **Question 7.**)

Then, review the materials and use the chart to describe any biases, stereotypes, omissions, or discrimination. (See **Question 8.**) For example, are the problems addressed equally appropriate to both sexes? Are there stereotypes in the pictures or text? Additionally, keep in mind that Title IX *does* prohibit the use of counseling and appraisal materials that are sex biased.

* * *

It is possible for there to be sex discrimination or bias in almost any health service that a school or college provides. In evaluating the range of programs available in a school or college for sex fairness, consider the following factors: (1) admission and accessibility to programs and services, (2) treatment of students in programs and services, and (3) materials used in programs and services.

11

Conclusion

Evaluating Health Services

Assessing student health services for sex fairness is not as simple as one would like. It requires sophistication and sensitivity, as well as a solid base of information. The data collection and analyses suggested in this book provide this base of information—and set the stage for the needed sophistication and sensitivity.

Use the data you have gathered to determine if a school or college is providing health services that are sex fair. If improvements are in order, the information you have amassed provides powerful ammunition for change.

Common sense requires that schools and colleges address health services their students need and are not getting elsewhere. And federal law (Title IX) requires that these services be sex fair. Sex-fair health services meet the needs of females and males equitably. When the needs of girls and boys are the same, this means providing the same services. And, when the needs of girls and boys are different (such as in the area of reproduction), it means meeting them to the same extent.

A low level of health services can be as equitable as a high level. Since inequities are typically corrected by raising the level of services, ensuring that health services are sex fair can improve the overall quality of health services provided to students. Eliminating inequities and discrimination on the basis of race, national origin, disability, and so forth can similarly improve the level of services students receive.

The following summary of the principles for assessing sex fairness in each area together with the "Summary of Findings" chart in appendix B, will enable you to assess whether or not health services at a given institution are indeed sex fair. The chart in appendix B will also help identify problem areas where policies need to be changed, practices need to be reviewed and revised, and new approaches and activities need to be considered and implemented.

Principles for Evaluating Sex Fairness

Chapters 3 through 10 of this book outline principles to use to evaluate whether or not school health services—from pregnancy to sports medicine to insurance to mental health—are sex fair. Following is a summary of these principles.

Pregnancy

- admission of pregnant students to programs and activities
- treatment of pregnant students in regular programs and activities
- treatment of pregnant students in special or separate schools, classes, and programs
- availability and quality of pregnancy-related health services

Sex Education

- admission and accessibility to programs and services
- treatment of students in programs and services
- materials used in programs and services*

Birth Control

- admission and accessibility to programs and services
- treatment of students in programs and services

Gynecological and Reproductive Health Care

- extent of gynecological services and the treatment of students who use these services (compared with other health services)
- admission, accessibility, and treatment of students who use other reproductive health services

Student Health Insurance

- treatment of pregnancy and pregnancy-related conditions
- treatment of gynecological and reproductive services
- coverage of other health services and accidents
- coverage of athletic accidents and injuries

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*Title IX does not require, prohibit, or abridge the use of any particular textbook or curricular materials. The Title IX regulation does, however, prohibit counseling and guidance materials that treat students differently on the basis of sex. In addition, a review of materials used by a program can assist in identifying problems with sex discrimination that are prohibited by the law. An asterisk after an item in the following lists is used to remind the reader of this fact.

Sports Medicine

- availability of medical personnel and assistance
- availability and qualifications of athletic trainers
- availability and quality of weight, training, and conditioning facilities

Alcohol and Drug Abuse

- admission and accessibility to programs and services
- treatment of students in programs and services
- materials used in programs and services*

Mental Health Services

- admission and accessibility to programs and services
- treatment of students in programs and services
- counseling and appraisal materials*

Other Health Services and Programs

- admission and accessibility to programs and services
- treatment of students in programs and services
- materials used in programs and services*

Question 1. Check here if there are no sex-equity problems whatsoever in this area.

Question 2. Describe any sex-equity problems.

Question 3. If no services are provided in this area and this omission affects females more than males, describe and explain.

Question 4. Provide any comments or other information.

These principles provide the framework for determining whether or not the health services provided by a school or college are sex fair. To take this final step, carefully examine the data that you collected and recorded on the charts in appendix B. Then, use the last chart (entitled "Summary of Findings") to record your conclusions.

Start by putting a check mark in the first column for each area with no sex-equity problems whatsoever. (See **Question 1.**) Base this judgment on the information you have recorded on the charts.

Then, for those areas where there *are* sex-equity problems, describe them. (See **Question 2.**) Use the information you have recorded on the charts—and refer back to the narrative in the appropriate chapters—to pinpoint problems.

Next, if there are no services provided in an area, determine if this omission affects females more than males and, if it does, describe and explain why. (See **Question 3.**)

And, finally, in the last column, provide any comments or other information. (See **Question 4.**) You might identify other equity concerns or point out areas where the level of services, while equitable, does not meet the needs of students.

This completes the analysis of whether or not a school or college health program is sex fair.

* * *

Although this chapter is called "Conclusion," the real conclusion rests in the hands of each reader who uses this book to broaden his or her vision of equitable health services or to assess the services a school or college provides. The law, Title IX, provides the impetus for change. And concern for the health and well-being of children, adolescents, and students of all ages provides the context for improving health services by ensuring that they are sex fair. The next steps—translating your findings into real life program improvements—are up to you.

Appendix A

What Are Sex-Fair Health Services? A Guide to What Title IX Says

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

These thirty-seven words constitute the entire key section of Title IX of the 1972 Education Amendments, which prohibits sex discrimination in schools and colleges receiving federal financial assistance. The regulation implementing these few words was issued in 1975. And the Civil Rights Restoration Act, which both clarified and added provisions, was enacted in 1988. The following pages provide both a summary and the actual wording of important parts of Title IX and its regulation.

Virtually all postsecondary institutions, as well as public elementary and secondary schools, receive federal financial assistance. So do many private elementary and secondary schools. Although the most visible Title IX issue has been sex discrimination in intercollegiate athletics, the law's prohibition against sex discrimination covers almost all aspects of education, including health services provided to students.

It is important for anyone who wants to use the law to understand it—what it can do and what it cannot do. While summaries and interpretations are useful and often necessary, in the final analysis it is the wording of the law, and its implementing regulation, that can either make or break an effort to use it to eliminate discrimination in school health services or any other aspect of a school program.

The Title IX regulation contains numerous provisions, some general and some specific, that prohibit sex discrimination in health services provided by schools and colleges. The general prohibitions in the regulation against sex discrimination apply to the entire range of services or activities at an institution, including health services. Also, the regulation specifically refers to

- medical, hospital, accident, or life insurance benefits, services, policies, or plans

- full-coverage health service
- family planning services
- gynecological care
- pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom
- the certification of a physician for some physical or emotional conditions requiring the attention of a physician

The pages that follow contain actual excerpts from the Title IX statute and regulation regarding

- important definitions
- general prohibitions against discrimination
- specific prohibitions against discrimination
- health and insurance benefits and coverage (including gynecological care)
- discrimination against pregnant students
- abortion
- marital and parental status
- access to courses and programs
- athletics, sports medicine, and training
- separate bathrooms, locker rooms, and shower facilities
- counseling and use of appraisal and counseling materials
- textbooks and curricular materials
- employment discrimination
- discrimination in programs not run directly by the school
- state laws, local laws, and organizational rules
- remedial action and affirmative action
- exemption for some practices of institutions controlled by religious organizations

Important Definitions

The Title IX regulation contains an entire section on definitions. Two of these definitions—of "Federal financial assistance" and "recipient"—are especially important.

§106.2(g) "Federal financial assistance" means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

§106.2(h) "Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

Additionally, in overturning the Supreme Court's *Grove City* decision and making clear that Title IX and the other civil rights laws applied to whole institutions, Congress defined "program or activity" in 1988. The Civil Rights

Restoration Act states that, for purposes of Title IX, the terms *program or activity* and *program* mean all of the operations of

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 901 to such operation would be consistent with the religious tenets of such organization.

General Prohibitions against Discrimination

The Title IX regulation generally prohibits *any* form of sex discrimination by recipients of federal financial assistance—that is, by schools, colleges, and other entities receiving federal education money. (See the definitions of *recipient* and *program and activity* under "Important Definitions," above.)

§106.31(a) General
Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research,

*occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.**

Specific Prohibitions against Discrimination

The regulation continues to spell out specific prohibitions.

§106.31(b) Specific prohibitions
Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions or other treatment. . . .

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for instate fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Note that the last item (8) is a fail-safe provision, covering anything not specifically mentioned in the regulation. This is important to remember regarding health services, where many important and frequently provided services are not discussed in detail in the regulation.

Health and Insurance Benefits and Coverage

The Title IX regulation contains specific prohibitions against discriminating in a medical, hospital, accident, or life insurance benefit, service, policy, or plan. The

*Subpart C deals with admission and recruitment; some schools, such as private undergraduate colleges, are specifically permitted to discriminate on the basis of sex in this area.

fact that a disproportionate number of females (or males) use a specific service, such as a family planning service, does not mean that this service is automatically defined as discriminatory under Title IX.

§106.39 Health and insurance benefits and services
In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part [which contains standards for dealing with employment discrimination] *if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.*

This reference to the provisions in the employment section of the regulation refers to the specific standards regarding fringe benefits, marital status, parental status, and pregnancy (found in §106.57 and §106.58 of the regulation).

§106.56 Fringe benefits
(a) "Fringe benefits" defined
For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of 106.54 [regarding compensation].

(b) Prohibitions
A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

Because the employment provisions (in §106.58) regarding marital and parental status are virtually identical to the parallel provisions regarding students (described below), they are not repeated here.

Discrimination against Pregnant Students

Title IX prohibits schools from discriminating against pregnant students, whether they are married or unmarried. Also, institutions cannot discriminate against a student because of childbirth, false pregnancy, or recovery from these conditions. The regulation

- prohibits discrimination in classes, programs, and extracurricular activities
- permits a school to require a doctor's certificate from a pregnant student only if the school makes the same requirement of all other students with physical or emotional conditions needing a physician's care
- allows schools to have separate programs for pregnant students, as long as participation is *completely voluntary* and the program is comparable to the regular school program
- requires that the school treat pregnancy as it treats other medical conditions
- requires a school to grant a pregnant student medical leave if *her* doctor says it is medically necessary

The actual regulatory language of these provisions follows.

§106.40(b) Pregnancy and related conditions

(1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such

recipient [institution] administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

§106.21(c) of the regulation also prohibits admissions discrimination "on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom."

Abortion

The Civil Rights Restoration Act, enacted in 1988, added several specific provisions to the Title IX statute regarding abortion. This act states:

§8 Abortion neutrality
No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds to perform or pay for an abortion.

Further, with regard to Title IX, the Civil Rights Restoration Act provides:

§909 Neutrality with respect to abortion
Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

This language in the Civil Rights Restoration Act will require that some of the provisions in the current Title IX regulation regarding "termination of pregnancy" be modified. As this book went to press (August 1989), however, the Office for Civil Rights of the U.S. Department of Education had not issued regulations to clarify the abortion-related provisions in the Civil Rights Restoration Act.

Marital and Parental Status

Schools cannot discriminate on the basis of marital or parental status. They cannot, for example, exclude unwed pregnant teens from school because they are not married.

§106.40 Marital or parental status

(a) Status generally

A recipient shall not apply any rule concerning a student's actual or potential parental, family or marital status which treats students differently on the basis of sex.

§106.21(c) of the regulation also prohibits admissions discrimination on the basis of marital or parental status.

Access to Courses and Programs

If any health-related or other activities are offered as a course, the regulation specifically outlaws requiring students to take a course or participate in a program on the basis of sex. It similarly forbids *requiring* a student to take a course or participate in a program on the basis of sex.

§106.34 Access to course offerings

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

There are several significant exceptions to this general rule. Regarding physical education classes, §106.34 of the regulation states:

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

Regarding sex education courses or human sexuality instruction, an elementary or secondary school (but not a college) can separate boys and girls, although it does not have to do so.

§106.34(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

This human sexuality or sex education exemption applies only to portions of

classes dealing with human sexuality, not to entire courses, classes, or programs just because one portion deals with human sexuality. This provision does not require a school to offer these courses in the first place.

Athletics, Sports Medicine, and Training

Athletic opportunities offered by schools and colleges include interscholastic, intercollegiate, club, and intramural sports, as well as physical education courses and programs. All these areas are covered by Title IX's mandate for equal opportunity—and health concerns arise in all these contexts.

To understand the health-related requirements of Title IX in this area, it is important to understand the general provisions of the regulation regarding interscholastic, intercollegiate, club, and intramural sports. Following is a short summary of these provisions.

- Overall, schools cannot discriminate in sports programs. They must provide "equal athletic opportunity to members of both sexes." [§106.41(a) and (c)]

- Schools can have separate teams when team selection is based on competitive skill, and in "contact sports" (such as football). [§106.41(b)]

- In determining equal opportunity, the government will assess "whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes." [§106.41(c)(1)]

- Factors the government will consider in assessing equal athletic opportunity include:

  equipment and supplies
  scheduling of game and practice time
  travel and per diem allowance
  opportunity of students to receive coaching and academic tutoring
  assignment and compensation of coaches and tutors
  provision of locker rooms, practice and competitive facilities*
  provision of medical and training facilities and services*
  provision of housing and dining facilities
  publicity [§106.41(c)]

- Regarding athletic scholarships, institutions must provide "reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics." [§106.37(c)]

- Schools had an "adjustment period" to comply with the sports provisions of the Title IX regulation. This period ended in 1976 for elementary schools and in 1978 for high schools and colleges. [§106.41(d)]

*These provisions, which relate directly to health concerns, are explained more fully in the following section.

- The rules or regulations of an outside organization or athletic association cannot be used to justify discrimination. [§106.6(b)]

- Title IX does not require coed locker rooms, showers, or bathrooms. [§106.33]

The Office for Civil Rights (OCR) further explained Title IX's requirements regarding intercollegiate athletics in a December 1979 Intercollegiate Athletics Policy Interpretation. Regarding medical and training facilities and services, OCR said that it would assess compliance with Title IX by examining the equivalence for men and women of

- availability of medical personnel and assistance

- health, accident, and injury insurance coverage

- availability and quality of weight and training facilities

- availability and quality of conditioning facilities

- availability and qualifications of athletic trainers

In addition, "other relevant" factors may also be considered in determining compliance with Title IX.

Regarding locker room, practice, and competitive facilities, the policy interpretation says that the following factors (as well as "other factors") will be used to assess compliance with Title IX:

- quality and availability of the facilities provided for practice and competitive events

- exclusivity and use of facilities provided for practice and competitive events

- availability of locker rooms

- quality of locker rooms

- maintenance of practice and competitive facilities

- preparation of facilities for practice and competitive events

The concerns in this area include, but go beyond, the health-related concerns addressed in this book.

In this policy interpretation, the government said that it would base its overall determination of whether or not a school was violating Title IX in this area upon an examination of

- whether the policies of an institution are discriminatory in language or effect

- whether disparities of a substantial and unjustified nature exist in the benefits, treatment, services, or opportunities afforded male and female athletes in the institution's program as a whole

- whether disparities in benefits, treatment, services, or opportunities in individual segments of the program are substantial enough in and of themselves to deny equal athletic opportunity

Title IX does not require that the funding of any aspect of men's and women's athletics, including sports-related health services, be exactly equal. "Revenue producing sports" are not exempt from Title IX. The regulation says:

> *§106.41(c) Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary* [for Civil Rights] *may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.*

Separate Bathrooms, Locker Rooms, and Shower Facilities

Title IX does *not* require coeducational bathrooms, locker rooms, or shower facilities.

> *§106.33 Comparable facilities*
> *A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.*

Counseling and Use of Appraisal and Counseling Materials

Title IX prohibits discriminatory counseling, as well as the use of materials that treat students differently on the basis of sex. However, the fact that either women or men actually use a service (such as birth control or pregnancy counseling) more does not automatically make that service discriminatory and in violation of Title IX. (See §106.39 above.)

> *§106.36 Counseling and use of appraisal and counseling materials*
> *(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.*
>
> *(b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument*

results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

Textbooks and Curricular Materials

Title IX does not require or forbid the use of any specific textbooks or materials.

§106.42 Textbooks and curricular materials
Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Employment Discrimination

Title IX prohibits sex discrimination against employees. This coverage of employment was challenged in court: in 1982 the U.S. Supreme Court issued a decision affirming that Title IX covered employment [*North Haven* v. *Bell*]. Subpart E of the Title IX regulation covers every aspect of sex discrimination in employment, including recruitment, hiring, and employment criteria; compensation and salaries; job classification and structure; fringe benefits; and advertising.

Discrimination in Programs Not Run Directly by the School

The regulation prohibits discrimination in activities that are considered part of the school's education program, even if they are not wholly operated by the school. The school cannot "facilitate, require, permit, or consider" participation of students in discriminatory outside programs.

§106.31(d) Programs not operated by recipient
(1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or

activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

In addition, Title IX (in §106.31[b][7]) prohibits schools from providing "significant assistance" to outside groups or programs that discriminate, unless there is a specific exemption somewhere else in the regulation.

State Laws, Local Laws, and Organizational Rules

The Title IX regulation spells out the principle of federal supremacy if there is a conflict between Title IX and local or state laws or with the rules of a private organization. None of these other laws or rules change the obligation of the school to ensure that its activities are not sex discriminatory.

§106.6 Effect of other requirements

(b) Effect of State or local law or other requirements

The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) Effect of rules or regulations of private organizations

The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

Remedial Action and Affirmative Action

If the government finds a school guilty of sex discrimination, it must take remedial action to remedy the problem. If there has been limited participation by one sex in the activities of an institution, the institution may take voluntary affirmative action to overcome these effects.

§106.3 Remedial and affirmative action and self-evaluation

(a) Remedial action

If the Assistant Secretary [for Civil Rights] *finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.*

(b) Affirmative action
In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246 [regarding affirmative action in employment].

Exemption for Some Practices of Institutions Controlled by Religious Organizations

An institution controlled by a religious organization is eligible to receive a religious exemption from sections of the Title IX regulation that conflict with a specific religious tenet of the organization.

§106.12 Educational institutions controlled by religious organizations
(a) Application
This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) Exemption
An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

It is important to remember the following:

- This is not a blanket exemption from the entire Title IX regulation; rather, it is an exemption from a specific section of the regulation that conflicts with a specific tenet of the religious organization that controls the school.
- The conflict must be with a *tenet* of the religious organization, not just a custom, practice, or administrative rule.
- The school cannot just claim the exemption; the highest ranking official of the school must write to the Office for Civil Rights, specifically identifying both the section of the regulation and the religious tenet.
- Private elementary and secondary schools (as well as colleges and universities) that receive federal education funds are covered by both Title IX and other federal laws prohibiting discrimination. And, no matter what the level, those controlled by a religious organization may apply for an exemption from any portion of the Title IX regulation that conflicts with the controlling organization's religious tenets.

Appendix B

Model Assessment Tools: Charts for Gathering Information regarding Title IX and School Health Services

The charts contained in this appendix correspond to the chapters in this book. They should be used in conjunction with the text of the book, which provides step-by-step guidance in obtaining and analyzing the information.

Title IX's Mandate for Nondiscrimination

Religious Exemption

1. If the institution is eligible for a religious exemption under Title IX, has the highest ranking official written to the Office for Civil Rights requesting it?

   ____ Yes ____ No ____ Not applicable (institution is not eligible for exemption)

   If YES, obtain a copy of this letter, as well as a copy of the response, if any, from the Office for Civil Rights.

2. Identify any specific sections of the regulation from which the institution is exempt.

   _____

   _____

   _____

3. Identify the religious tenet that justifies the exemption.

   _____

   _____

   _____

Pregnant Students and the Schools

Admission of Pregnant Students to Programs and Activities

1. How many pregnant students

   a. remained in the regular classroom and program? _____
   b. remained in the regular classroom/program *but* also took special courses/programs? _____
   c. enrolled in a special school, program, or class? _____
   d. received home instruction? _____
   e. were expelled or suspended? _____
   f. dropped out of school? _____
   g. Other. Specify. _____ _____
   h. are unaccounted for? _____
   i. Total number of pregnant students. _____

2. After childbirth, how many students

   a. returned to or stayed in the regular classroom/program? _____
   b. stayed in a special class/program? _____
   c. did not return to school? _____
   d. Other. Specify. _____ _____
   e. are unaccounted for? _____
   f. Total. _____

3. Are pregnant students admitted to programs and activities of the school on exactly the same basis as other students with medical conditions?

   ____ Yes ____ No

   a. If NO, describe any formal or informal rules, policies, or practices that treat pregnant students differently; specify who imposed them; and list the reasons given to justify them.

   _____

   _____

   _____

   _____

   b. If NO, describe any comparable admissions restrictions on students with other medical conditions.

   _____

   _____

4. Does the school have and implement a clear policy *not* to harass or discriminate in admission against a young woman who has had a legal abortion?

   ____ Yes ____ No

   If NO, describe how the school discriminates in admission against these students.

   _____

   _____

Treatment of Pregnant Students in Regular Programs and Activities

5. Are pregnant students treated the same as other students in all programs and activities of the school, including extracurricular activities?

___ Yes ___ No

If NO, describe any formal or informal rules, policies, or practices that treat pregnant students differently; specify who imposed them; and list the reasons given to justify them for the following areas:

a. Treatment in courses and programs _____

_____

b. Grades _____

_____

c. Honors and academic recognition _____

_____

d. Financial aid and scholarships _____

_____

e. Student records, recommendations, and job placement and counseling _____

_____

f. Extracurricular activities _____

_____

g. Dormitory and housing rules _____

_____

h. Access to school-provided and -facilitated health services _____

_____

i. Other discriminatory treatment. Specify _____

_____

6. Does the school treat students who have had abortions as it treats other students in all programs and activities of the school?

___ Yes ___ No

a. If NO, describe how students who have had abortions are treated differently with regard to treatment in courses and programs, grades, honors and academic recognition, financial aid and scholarships, student records, recommendations, job placement and counseling, extracurricular activities, dormitory and housing rules, and other practices.

_____

_____

_____

b. If NO, describe how students who have had abortions are treated differently with regard to access to school-provided and -facilitated health services.

_____

_____

7. Are the accommodations the school makes for the *physical disabilities* due to pregnancy and the symptoms of pregnancy comparable to those the school makes for other medical conditions?

   ____ Yes ____ No

   If NO, describe how the accommodations are inadequate and/or unequal for pregnancy.

   _____

   _____

   _____

8. If the school requires pregnant students to have a doctor's certification to participate in any class or activity, are the same requirements made of all other students with conditions requiring the attention of a physician?

   ____ Does not apply, since medical certification is not required for any condition.
   ____ Yes, certification requirements are the same for pregnant students as for other students.
   ____ No, certification requirements are different for pregnancy.

   If NO, describe the pregnancy requirements and how they differ.

   _____

   _____

   _____

9. Does the school give pregnant students leave for as long as is medically necessary?

   ____ Yes ____ No

   If NO, describe any limitations on this leave.

   _____

   _____

   _____

10. At the end of the leave, are pregnant students reinstated to the status that they held when the leave began?

    ____ Yes ____ No

    If NO, describe what does happen when these students return.

    _____

    _____

    _____

Treatment of Pregnant Students in Special or Separate Schools, Classes, and Programs

11. List each special class, program, or school available to pregnant students.	12. Is participation for pregnant students *completely* voluntary (or is it required, strongly encouraged, etc., by the school)? Explain how pregnant students enroll in the program.	13. Describe any other students who are in the program, and give the approximate number in each category.	14. Describe any special services provided in conjunction with these programs.	15. Describe any ways that programs offered pregnant students are not comparable to those offered other students.	16. Provide other relevant information.

Availability and Quality of Pregnancy-Related Health Services

17. List any health-related services that the school provides to pregnant students, and estimate the number of students who used these services last year.

a. None _____
b. Referrals to private and community health services _____
c. Counseling _____
d. Pregnancy tests _____
e. General prenatal care _____
f. Maintenance of health charts _____
g. Lamaze instruction or exercise _____
h. Follow-up care after delivery or termination of pregnancy _____
i. Other. Specify _____

_____ _____

18. Describe any ways that services for pregnant students are *not* comparable to services provided for other conditions.

a. The cost is out of line _____

_____

b. The location of the services is different or inconvenient _____

_____

c. The hours of the services are different or more limited _____

_____

d. Other. Specify _____

_____

Sex Education and Birth Control Services and Programs

Sex Education Information Services

1. Does the school have any programs, courses, classes, or other instruction dealing with sex education, human sexuality, and/or birth control? ___ Yes ___ No
   If YES, provide the following information:

2. List each course or program.	3. What grade levels or classes participate in each course or program?	4. What is the form of the program (e.g., class, unit)?	5. What department, group, or unit inside or outside the school provides the course or program?	6. What general subjects are covered?	7. Specify other important information or differences.	8. Indicate the total number of students in each course or program. Then indicate what percentage is female.		9. Is the number of females and males roughly proportional?	10. If the numbers are not approximately equal for females and males, give the school's rationale or reasons for the disproportion.
						Total	% Female		
a. Coeducational									
b. Females only									
c. Males only									

CONTINUED

(2. continued) List each course or program.	11. Describe any other differences between females and males regarding admission or accessibility.	12. Look closely at both coeducational programs and single-sex programs. a. For *coeducational programs*, describe any discriminatory or different treatment of females and males. b. For *single-sex programs*, describe any ways that parallel programs are not comparable.	13. Give the school's rationale or reason for this different treatment.	14. List each textbook, curriculum, study guide, or other materials used.	15. Describe any biases, stereotypes, or discrimination in the materials.
a. Coeducational					
b. Females only					
c. Males only					

Birth Control and Family Planning Services

16. Does the school provide any birth control or family planning services? ____ Yes ____ No
If YES, provide the following information:

17. Identify and list each birth control and family planning service.	18. What department, group, or unit provides the service?	19. Indicate the total number of students who use each service. Then indicate what percentage is female.		20. Describe any differences between females and males regarding admission or accessibility.
		Total	% Female	

21. Describe any discriminatory or different treatment of females and males, or treatment that has a disparate impact on one sex or the other.

22. Give the school's rationale or reasons for any different treatment.

23. Identify and describe any other equity or discrimination problems in admission or accessibility to or treatment in family planning services for minority or disabled females.

Gynecological and Reproductive Health Care

Extent of Gynecological Services and the Treatment of Students Who Receive These Services

1. Does the school provide full-coverage health service? ____ Yes ____ No
   Continue to the following questions, even if the answer is NO.

	Services available for most routine *nongynecological* health problems (e.g., colds, infections, injuries, allergies)	Services available to meet the *gynecological* and reproductive health needs of women (e.g., pelvic examinations, pap smears)	Are gynecological services comparable to, better than, or less adequate than nongynecological services? Explain.
2. *Physical examinations and routine treatment* a. Briefly describe the physical examination and treatment services provided and how extensive they are.			
b. Specify who provides the services, and indicate their general level of expertise (high, average, low).			
c. Specify the cost to the student, and who or what covers this cost.			
d. Specify the days and hours when services are available.			
e. Indicate any other relevant information or differences (such as the convenience of the location or accessibility for physically disabled students).			
3. *Laboratory tests and procedures* a. List each test available and the cost to the student.			
b. Indicate relevant information or differences between services for routine health concerns and gynecological services (such as providers, schedules, insurance coverage, and accessibility).			
4. *Emergency services* a. Describe emergency or acute care available to students.			
b. Indicate relevant information or differences (such as providers, schedules, insurance coverage, and accessibility).			

Admission, Accessibility, and Treatment of Students Who Use Other Reproductive Health Services

5. Provide the following information:

	a. List reproductive health services not already described.	b. Describe any differences between services available to women and services available to men.	c. Describe ways these services are not comparable or equitable for women and men.
Physical examinations and routine treatment			
Laboratory tests and procedures			
Emergency services			

Student Health Insurance

Basic Information

1. Name and address of insurance company: _____

2. Name(s) and telephone number(s) of school personnel responsible for administering and negotiating the policy:

3. Annual cost of the basic policy for individual students: $_____

4. Annual cost of additional coverage that can be purchased (other than pregnancy coverage), such as

   a. High-option coverage $_____
   b. Family coverage $_____
   c. Other coverage $_____ Specify _____

Treatment of Pregnancy and Pregnancy-Related Conditions

5. Is eligibility for coverage and benefits for pregnancy and pregnancy-related conditions the same as for other medical conditions?

   ____ Yes ____ No

   If NO, describe how eligibility differs for pregnancy and pregnancy-related conditions.

6. Is the cost of insurance for pregnancy and pregnancy-related conditions included in the cost of the ***regular*** student health insurance policy (even if this coverage is more limited than the coverage for other medical conditions?

   ____ Yes ____ No

   If NO, describe any specific pregnancy coverage that students can purchase, even if it is less comprehensive than coverage for other conditions. Also, indicate the cost of any additional coverage.

Treatment of Pregnancy and Pregnancy-Related Conditions, and Treatment of Gynecological and Reproductive Services

7. Describe all ways that the coverage for pregnancy and pregnancy-related conditions and gynecological and reproductive services differs from the coverage of other medical conditions (accidents, illnesses, and sicknesses).

	Coverage for other medical conditions (illlnesses, accidents, and sicknesses)	Pregnancy and Pregnancy-Related Conditions		Gynecological and Reproductive Services		Other information
		Coverage for pregnancy and pregnancy-related conditions.	Is coverage exactly the same or is it different from that for other medical conditions?	Coverage for gynecological and reproductive services	Is coverage exactly the same or is it different from that for other medical conditions?	
a. No differences; exactly the same in ALL respects.						
b. Maximum dollar limit on benefits.						
c. Maximum dollar benefit per incident.						
d. Amount of deductible.						
e. Amount of co-payment.						
f. Conditions that are specifically excluded.						
g. Schedule or method for determining reimbursable or covered costs.						
h. X-rays, laboratory and other tests, and medication coverage and cost to the student.						
i. Coverage of in-hospital and out-of-hospital expenses.						
j. Coverage of physical exams, diagnostic services, and routine or preventive care.						
k. Length of coverage after the event (e.g., illness, surgery, delivery).						
l. Coverage of specialists' fees.						
m. Restrictions, if any, on the basis of marital status.						
n. Time limits on preexisting conditions.						
o. Maximum number of hospital days allowed.						
p. Other (describe any other ways that the coverage differs).						

Coverage of Other Health Services and Accidents

8. What, if any, additional exclusions from coverage, limitations, or conditions apply only to one sex or have a disproportionate impact on one sex?

_____

_____

_____

_____

Coverage of Athletic Accidents and Injuries

9. Is the coverage for all-female and all-male teams and athletes *exactly* the same?

____ Yes ____ No

10. If NO, describe or explain how the coverage differs, and indicate whether the males or the females have the most comprehensive coverage. For example, there may be

    a. Different insurance companies (this *may* not be relevant, but it makes it more likely that the policies are not equal)

    _____

    b. Different eligibility requirements _____

    c. Different deductible or dollar limits _____

    d. Different extent of coverage (for example, are women covered only during games, while men are covered for practices and when not competing, as well as during games?)_____

    _____

    e. Different coverage of support personnel (such as managers or trainers) _____

    _____

    f. Different cost to female and male athletes _____

    g. Other differences (specify what these other differences are) _____

11. Describe any exclusions especially important to women (such as sports gynecology or pregnancy).

_____

_____

12. If any team(s) gets special or extra coverage, identify the team(s) and describe this extra coverage.

_____

_____

Sports Medicine

Availability of Medical Personnel and Assistance

1. Types of medical assistance and services	2. List teams receiving each service or type of assistance.		3. Indicate who provides the service or assistance.		4. Describe differences in the quality or extent of services available to women's and men's teams.
	a. Men's teams	b. Women's teams	a. Men's teams	b. Women's teams	
a. Physical exams					
b. Routine health care					
c. Aid for injuries (at home and away games and at practices)					
d. Availability of emergency and ambulance services (at home and away games and at practices)					
e. Availability of medical supplies (at home and away games, practices, and other times)					
f. Follow-up care for injuries					
g. Specialist care(such as orthopedists or sports gynecology care)					
h. Other services (such as taping, proper fitting of equipment; specify the services)					

Availability and Qualifications of Athletic Trainers

5. List each sport by women's and men's teams.	6. Who are the trainers?				7. What is the average number of trainers available to each team during home games, away games, practices, and other times?	8. List the services trainers actually provide.	9. List other information relevant to the quality of athletic trainers and the availability of their services.
	a. Name and title of each trainer for each sport	b. Salary of each trainer (per season, per sport, or per year)	c. Hours per week and weeks per year that trainer works with each team	d. Qualifications and other information about trainers			
Women's teams							
Men's teams							

Availability and Quality of Weight, Training, and Conditioning Facilities

10. List each major piece of equipment.	11. Indicate where the equipment is located.	12. List the teams that use the equipment.	13. Give the days and hours when the equipment is available.	14. Describe any sharing arrangements or priority use of the equipment.	15. Provide other relevant information.
a. *Available to men only*					
b. *Available to women only*					
c. *Available to both women and men*					

Alcohol- and Drug-Abuse Services and Programs

Basic Information,
and Admission and Accessibility to Programs and Services

1. Does the school provide any services or programs regarding alcohol or drug abuse? _____ Yes _____ No
   a. If NO, describe any ways that the absence of services falls unequally on one sex or the other.

1.b. If YES, list and briefly describe each service and program.	2. Indicate the total number of students who annually use each service or program. Then indicate what percentage is female.		3. If the numbers are not approximately equal for females and males using each service or program, give the school's rationale or reasons for the disproportion.
	Total	% Female	
Alcohol-abuse services and programs			
Drug-abuse services and programs			

CONTINUED

Treatment of Students in Programs and Services, and Materials Used in Programs and Services

(1.b. continued) List and describe each service and program.	4. Describe any different or discriminatory treatment of or services available to females and males, or treatment that has a disproportionate effect on one sex or the other.	5. Give the school's rationale or reasons for this different or discriminatory treatment.	6. Describe any other equity or discrimination problems.	7. List any materials used by alcohol- and drug-abuse programs and services.	8. Describe any biases, stereotypes, or omissions.
Alcohol abuse					
Drug abuse					

Mental Health Services

Basic Information,
and Admission and Accessibility to Programs and Services

1. Does the school provide any mental health services? _____ Yes _____ No
   a. If NO, describe any ways that the absence of services falls unequally on one sex or the other. _____

_____

1.b. If YES, list and describe each service.	2. Indicate the total number of students who annually use each service. Then indicate what percentage is female.		3. If the numbers are not approximately equal for females and males for each service, give the school's rationale or reasons for the disproportion.
	Total	% Female	
Services aimed at the general student body			
Services aimed at, or disproportionately used by, females			
Services aimed at males			

CONTINUED

Treatment of Students in Programs and Services, and Counseling and Appraisal Materials

(1.b. continued) List and describe each service.	4. Describe any different or discriminatory treatment of or services available to females and males, including treatment that has a disproportionate impact on one sex or the other.	5. Give the school's rationale or reasons for this different or discriminatory treatment.	6. Describe any other equity or discrimination problems.	7. List any counseling or appraisal materials used by the school.	8. Describe any discrimination, biases, or stereotypes.
Services aimed at the general student body					
Services aimed at, or disproportionately used by, females					
Services aimed at males					

Other Health Services and Programs

Basic Information

1. Does the school provide any services or programs in each area?

	Yes (go to the next page)	No	a. If NO, describe any ways that the absence of services falls unequally on one sex or the other.
Dental screening and services			
Immunization and screening services and requirements			
Services for victims of incest and child abuse			
Nutrition and weight-control services			
Environmental and occupational health and safety			
Other care and services			

CONTINUED

Admission and Accessibility to Programs and Services

1.b. If YES, list and briefly describe each service and program for each area.	2. Indicate the total number of students who annually use each service. Then indicate what percentage is female.		3. If the numbers are not approximately equal for females and males for each service or program, give the school's rationale or reasons for the disproportion.
	Total	% Female	
Dental screening and services			
Immunization and screening services and requirements			
Services for victims of incest and child abuse			
Nutrition and weight-control services			
Environmental and occupational health and safety services			
Other care and services			

CONTINUED

(1.b. continued) List and describe each service for each area.	4. Describe any different or discriminatory treatment of or services available to females and males, including treatment that has a disproportionate impact on one sex or the other.	5. Give the school's rationale or reasons for this different or discriminatory treatment.	6. Describe any other equity or discriminatory policies or practices.	7. List any materials used with these programs and services.	8. Describe any biases, stereotypes, omissions, or discrimination.
Dental screening and services					
Immunization and screening services and requirements					
Services for victims of incest and child abuse					
Nutrition and weight-control services					
Environmental and occupational health and safety services					
Other care and services					

Conclusion

Summary of Findings

	1. Check here if there is no sex-equity problems whatsoever in this area.	2. Describe any sex-equity problems.	3. If no services are provided in this area and this omission affects females more than males, describe and explain.	4. Provide any comments or other information here.
Pregnancy				
Admission				
Treatment in regular programs				
Treatment in special programs				
Pregnancy-related health services				
Sex education				
Admission and accessibility				
Treatment				
Materials				
Birth control				
Admission and accessibility				
Treatment				
Gynecological and reproductive health care				
Gynecological services				
Other reproductive health services				
Student health insurance				
Treatment of pregnancy				
Treatment of gynecological and reproductive services				
Other health services and accidents				
Athletic accidents and injuries				

CONTINUED

	1. Check here if there are no sex-equity problems whatsoever in this area.	2. Describe any sex-equity problems.	3. If no services are provided in this area and this omission affects females more than males, describe and explain.	4. Provide any comments or other information here.
Sports medicine				
Medical personnel and assistance				
Athletic trainers				
Weight, training, and conditioning equipment				
Alcohol and drug abuse				
Admission and accessibility				
Treatment				
Materials				
Mental health services				
Admission and accessibility				
Treatment				
Counseling and appraisal materials				
Other health services and programs				
Admission and accessibility				
Treatment				
Materials				

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